

*United States Court of Appeals
for the Second Circuit*



APPENDIX

ORIGINAL

75-4027

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PLS

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 75-4027

SID FARBER and NADIA FARBER,

Petitioners-Appellants,

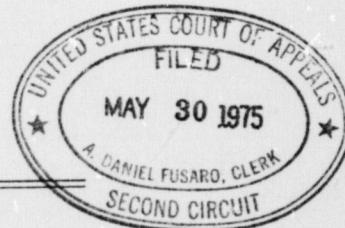
against

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

APPELLANTS' APPENDIX

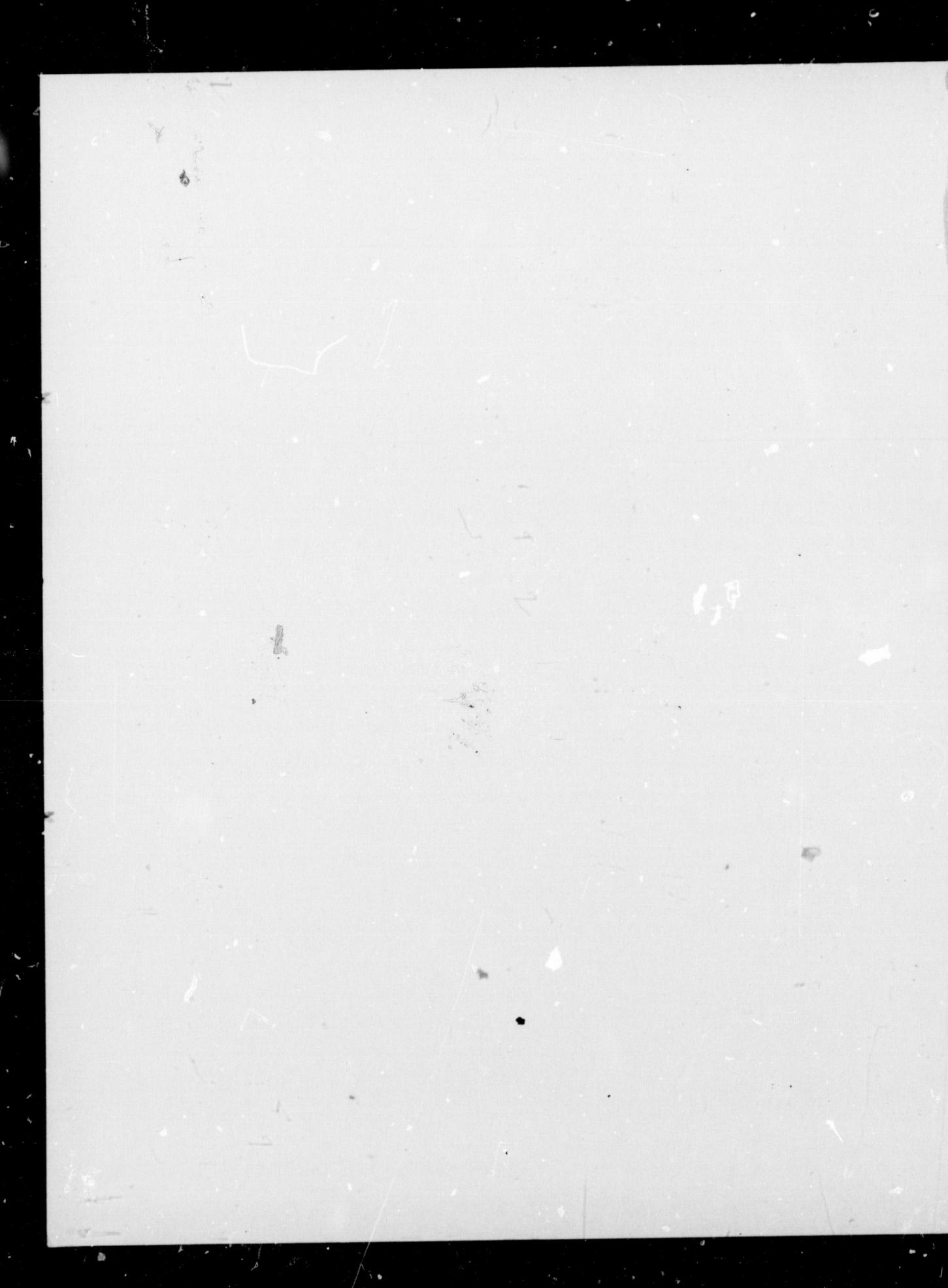
PRYOR, CASHMAN & SHERMAN
Attorneys for Petitioners-Appellants
410 Park Avenue
New York, New York 10022



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DOCKET ENTRIES

TAX COURT OF THE UNITED STATES
GENERAL DOCKET

DOCKET NO. 2542-70

		APPEARANCES FOR PETITIONER:
SID FARBER and NADIA FARBER, Husband-Wife		Richard Osserman* (Weisman, Allan, Spett & Sheint
4 Central Park South		NAME 1501 Broadway, New York, New York 10026.
New York, New York	PETITIONER,	Stephen F. Huff, 410 Park Avenue, N.Y., New York 10022.
VS.		ADDRESS 10022 E/A 1/18/74.
COMMISSIONER OF INTERNAL REVENUE,	RESPONDENT.	#c/o Pryor, Cashman & Sherman, 410 Park Ave., New York, N.Y. 10022

Date Month Day Year	Filings and Proceedings	Action	Served
May 1, 1970	PETITION FILED: FEE PAID May 1, 1970	GRANTED	May 5, 1970
May 1, 1970	PETRS'. REQUEST for Trial at New York, N. Y., filed.	May 5, 1970	May 5, 1970
June 29, 1970	ANSWER filed by Resp.		Jun 30, 1970
April 15, 1971	APPLICATION for Order to take Deposition of Professor Giovanni Mariacher upon written interrogatories filed by Petr. Written Interrogatories attached.	GRANTED (See order 8/4/71)	
April 16, 1971	NOTICE OF APPLICATION to take Deposition, upon written interrogatories to Resp. (Objections and/or cross-interrogatories due on or before April 30, 1971).		Apr 16, 1971
May 3, 1971	MOTION by Resp. for leave to file Motion for extension of time to file objections, out of time. (Motion for extension of time to file Objections and cross-interrogatories Lodged)	GRANTED May 4, 1971	May 5, 1971
May 4, 1971	MOTION by Resp. for extension of time to June 30, 1971 to file objections and cross-interrogatories filed.	GRANTED May 4, 1971	May 5, 1971
June 29, 1971	NOTICE OF OBJECTION to Petr's application to take deposition, and Request for hearing.		Jul 2, 1971
July 2, 1971	NOTICE of Hearing on Petr's Application for Order to take deposition, on July 28, 1971 at Washington, D.C. (Continued on page 2)		Jul 2, 1971

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Docket Entries

DOCKET NO. 2542-70

(Continuation)

SID AND NADIA FARBER		PETITIONER	PAGE 2
Date Month Day Year	Filings and Proceedings	Action	Served
July 14, 1971	MOTION by Petr. for continuance of hearing on Application to take Deposition, from July 28, 1971 to Aug. 4, 1971.	GRANTED July 14, 1971	Jul 15, 1971
Aug. 4, 1971	HEARING at Washington, D. C. before Judge Drennen. Affidavit in response to Resp. objection to written interrogatories and cross motion - Filed. Petr. memorandum of law - Filed. Petr. application to take deposition upon written interrogatories - Granted. Resp. to file cross-interrogatories by Sept. 7, 1971.		Aug 11, 1971
Aug. 4, 1971	ORDERED, that Petrs. application to take deposition upon written interrogatories of Giovanni Mariacher and Giuseppe Fiocco is granted, and Resp. directed to file cross-interrogatories on or before Sept. 7, 1971. Upon receipt of cross-interrogatories, order to take depositions will issue.		Aug 11, 1971
Aug. 6 1971	TRANSCRIPT of Aug. 4, 1971 Received		
Aug. 23, 1971	MOTION by Resp. to extend time to Sept. 21, 1971 within which to file cross interrogatories.	GRANTED Aug. 25, 1971	Aug 26, 1971
Sep 21, 1971	RESPONDENT'S Cross-Interrogatories of Professor Giuseppe Fiocco filed		Sep 30, 1971
Sept. 21, 1971	RESPONDENT'S Objections to Petitioners' Interrogatories of Professor Giuseppe Fiocco filed		Sep 30, 1971
Sept. 21, 1971	RESPONDENT'S Cross-Interrogatories of Professor Giovanni Mariacher filed		Sep 30, 1971
Sept. 21, 1971	RESPONDENT'S OBJECTIONS to Petitioners' Interrogatories of Professor Giovanni Mariacher filed		Sep 30, 1971
Sept. 29, 1971	ORDER to take Depositions upon written interrogatories and cross- interrogatories of Professor Giovanni Mariacher.		Sep 30, 1971

U.S. GOVERNMENT PRINTING OFFICE 1950 O-525151

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Docket Entries

TAX COURT OF THE UNITED STATES
GENERAL DOCKET

DOCKET NO. 2542-70

(Continued on)

SID AND NADIA FARBER		PETITIONER	PAGE
Date Month Day Year	Filings and Proceedings	Action	Served
Dec. 3, 1971	NOTICE by Petr. of Motion to take Deposition upon written interrogatories Professor Giovanni Mariacher AMENDED Interrogatories to be propounded to Professor Giovanni Mariacher attached.		Dec 8, 1971
Dec. 6, 1971	ORDERED that petrs' application as directed to be filed this date is granted and resp's cross-interrogatories and objections as noted above are hereby considered to relate to the petrs' application and written interrogatories filed this date and therefore the Court's order to take depositions dated Sept 29, 1971 is moot.		Dec 8, 1971
Dec. 8, 1971	ORDER to take Deposition's upon written interrogatories ORDERED that a United States Consular Officer of the Office of the Consular General of the U.S. of America, Milan, Italy, he is designated and authorized to take the deposition of Prof. Giovanni Mariacher, San Marco 52, Venice Italy, upon the written interrogatories and cross-interrogatories attached in accordance with the Rules of this court at Milan, Italy, return deposition to Court with the required certificate of return attached.		Dec 8, 1971
March 10, 1972	DEPOSITION of Prof. Giovanni Mariacher received. (Orig. Only).		
Jan. 10, 1973	NOTICE for Trial at New York, N.Y. on March 19, 1973		Jan. 10, 1973
Mar. 19, 1973	HEARING at New York, N.Y. before Judge Simpson. Respondent's motion for continuance: filed - granted Mar 19, 1973 GRANTED and continued generally. (continued to page 4)		APR 2 1973

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Docket Entries

TAX COURT OF THE UNITED STATES
GENERAL DOCKET

DOCKET NO. 2542-70

(Continued)

SID & NADIA FARBER		PETITIONER	PAGE 1
Date Month Day Year	Filings and Proceedings	Action	Served
Mar. 29, 1973	ORDER, that case is calendared for trial on June 18, 1973 at New York, N.Y.		APR 2 1973
April 5, 1973	TRANSCRIPT of Mar. 19, 1973 rec'd.		
June 8, 1973	MOTION on behalf of Petr. for continuance from June 18, 1973, New York, N.Y. trial session and restore to the general trial docket. (No Obj. Resp.)	GRANTED June 8, 1973	JUN 11, 1973
Oct. 9, 1973	NOTICE OF TRIAL ON January 14, 1974 at New York, N.Y.		OCT. 9, 1973
Jan 14, 1974	TRIAL at New York, New York before Judge Tannenwald.		
	Deposition of Giovanni Mariacher received in evidence and made part of the record.		
	ENTRY OF APPEARANCE by Stephen F. Huff as counsel for petrs. filed.		JAN 30, 1974
	Stipulation of Facts filed with exhibits.		
	ORIGINAL BRIEFS DUE: March 19, 1974		"
	REPLY BRIEFS DUE: April 18, 1974		"
	SUBMITTED TO JUDGE TANNENWALD		
Feb 1, 1974	TRANSCRIPT of Jan 14, 18, 1974 received.		
Mar. 19, 1974	BRIEF for Resp. filed.		MAR 21 1974
March 20, 1974	BRIEF for Petitioner filed. (timely postmarked) (C/S, March 18, 1974 to resp.)		
April 18, 1974	REPLY BRIEF for respondent filed.		APR 19 1974
April 19, 1974	REPLY BRIEF for Petitioner filed. (timely postmarked) (C/S, April 17, 1974 to Resp.)		
	Continued to page 5		

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Docket Entries

UNITED STATES TAX COURT
GENERAL DOCKET

DOCKET NO. 2512-70

(Continued)

SID FARRER and NADIA FARRER			PETITIONER	PAGE 5
Date Month Day Year	JUDGE TANNENWALD	Filings and Proceedings	Action	Served
June 17, 1974	MEMORANDUM FINDINGS OF FACT AND OPINION filed, Judge Tannenwald.	Decision will be entered under Rule 155.		JUN 17 1974
Aug. 5, 1974 Aug. 9, 1974	MOTION by Petitioner's to Reconsider ORDER, that Petr's Motion filed August 5, 1974 is Denied.		DENIED 8/9/74	Aug 12, 1974 Aug 12, 1974
Oct. 10, 1974	AGREED COMPUTATION filed.			
Oct. 16, 1974	DECISION entered, Judge Tannerwald.	APPELLATE PROCEEDINGS		Oct 16, 1974
Dec. 27, 1974	MOTION to fix amount of bond.			Dec. 30, 1974
Dec. 30, 1974	ORDER fixing amount of bond at \$107,729.53.			Dec. 30, 1974
Jan. 8, 1975	Bond in the amount of \$110,000.00, with a proved collateral, approved and ordered filed.			
Jan. 8, 1975	NOTICE OF APPEAL to U.S.C.A., 2nd Cir., filed by Petr.			Jan. 8, 1975
Jan. 8, 1975	NOTICE of filing with copy of notice of appeal sent to Mr. Meade Whitaker, Chief Counsel.			Jan. 8, 1975
Jan. 8, 1975	NOTICE, to parties, of assembling and date for transmission of the record.			Jan. 8, 1975

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PETITION

UNITED STATES TAX COURT

SID FARBER and NADIA FARBER, :
Husband Wife,

Petitioners,

Docket No. 2512

-against-

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

P E T I T I O N

The above-named Petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency and as the basis for their case allege as follows:

1. Petitioners, Mr. Sid Farber and his wife, Mrs. Nadia Farber, reside at 24 Central Park South, City, County and State of New York, and the tax returns in question were filed in the office of the District Director of Internal Revenue, Brooklyn, New York.

2. On March 27, 1970 the notice of deficiency (a copy of which is annexed hereto and marked Exhibit A) was mailed to Petitioners by the Office of the Regional Commissioner, North-Atlantic Region of the Internal Revenue Service.

3. The amount of the deficiency, which is for income tax and all of which is in controversy, for the year ending

December 31, 1966, is \$37,307.94 and for the year ending December 31, 1967, is \$35,415.23.

4. The Commissioner has erred in the determination of the deficiency in that he valued a work of art donated by the Petitioners to Hofstra University titled "Susanna" in the amount of \$2,000.

5. The facts upon which Petitioners rely as sustaining assignment of error are as follows:

a. On or about December 28, 1966, Petitioners donated to Hofstra University (then Hofstra College) of Hempstead, Long Island, a painting entitled "Susanna" attributed to Jacopo Robusti Tintoretto.

b. The fair market value of the painting was in December 1966; \$150,000.00.

c. In addition, during 1966, Petitioners contributed \$340 to miscellaneous charities not here in dispute, which amount together with the \$150,000 was returned on their tax return as charitable deductions.

d. By reason of the limitation on charitable contributions, only \$79,944.60 of the \$150,340.00 of contributions made in 1966 could be deducted from Petitioners' adjusted gross income in 1966 and such amount was properly so deducted.

e. Petitioners carried over against their 1967 income unused 1966 charitable contributions in the

aggregate amount of \$70,395.40 and such amount was properly deducted on their 1967 return.

f. Hofstra College was at the time of the gift an educational organization and contributions to it were deductible under the then provisions of the Internal Revenue Code up to 30% of Petitioners' adjusted gross income. Contributions to Hofstra College were further subject to the carryover provision for charitable contributions.

WHEREFORE, the Petitioners pray that this Court may try this case and vacate the notice of deficiency and dismiss the same.

RICHARD OSSERMAN
Counsel for Petitioners
1501 Broadway
New York, New York 10036

(Verified)

UNITED STATES TAX COURT

SID FARMER and NADIA FARMER,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

1970 JUN 29 PM 5:36

Docket No. 2542-70
UNITED STATES
TAX COURTANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits, denies and alleges as follows:

1. to 3., inclusive. Admits the allegations of paragraphs 1. to 3., inclusive, of the petition.

4. Denies that the Commissioner erred as alleged in paragraph 4 of the petition.

5. a. Alleges that on December 29, 1966, petitioners donated to Hofstra University (then Hofstra College) of Hempstead, Long Island, a painting entitled "Susanna"; denies the remaining allegations of subparagraph a. of paragraph 5 of the petition.

b. Denies the allegations of subparagraph b. of paragraph 5 of the petition.

c. Admits the allegations of subparagraph c. of paragraph 5 of the petition.

d. and e. Denies the allegations of subparagraphs d. and e. of paragraph 5 of the petition.

f. Admits the allegations of subparagraph f. of paragraph 5 of the petition.

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Answer

L

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiencies determined by the respondent be in all respects approved.

{Sgd} K. MARTIN WORTHY, JR.

K. MARTIN WORTHY
Chief Counsel
Internal Revenue Service

OF COUNSEL:

MARVIN F. HAGEN
Regional Counsel
MARLINE GROSS
Attorney
Internal Revenue Service
26 Federal Plaza (12th Floor)
New York, New York 10007

STIPULATION OF FACTS

UNITED STATES TAX COURT

SID FARBER AND NADIA FARBER,)
)
Petitioners,)
)
v.) Docket No. 2542-70
)
COMMISSIONER OF INTERNAL REVENUE,)
)
)
Respondent.)

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that the following facts shall be taken as true, provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true; and provided, further that both parties reserve the right to object to all or any of the facts herein stipulated on the ground of irrelevance or immateriality:

1. The petitioners are husband and wife and resided at 24 Central Park South, City, County and State of New York at the time of the filing of the petition herein.

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Stipulation of Facts

2. The petitioners filed joint individual Federal income tax returns for the calendar years 1966 and 1967, using the cash basis of accounting, with the District Director of Internal Revenue, Brooklyn, New York. Attached hereto and designated as Exhibits 1-A and 2-B are page 1 of petitioners' tax returns for the years 1966 and 1967, respectively.

3. On December 29, 1966, the petitioners donated to Hofstra University (then Hofstra College) of Hempstead, Long Island, New York, a painting entitled "Susanna."

4. The petitioners' income tax return filed for the calendar year 1966 reflected contributions as follows:

1. Total cash contributions	\$ 340.00
2. Other than cash	150,000.00
3. Carryover from prior years	- 0 -
Total Contributions	\$ 79,944.60

5. The petitioners' income tax return filed for the calendar year 1967 reflected contributions as follows:

Cash

United Jewish Appeal	\$ 1,100.00
American Bulgarian League	150.00
Royal Club King Alexander 1st	105.00
Appraisals of Painting Gifted	
to Hofstra University in 1966	750.00
Sundry	75.00
	\$ 2,180.00

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Stipulation of Facts

Other Than Cash

Carryover of contribution of
Oil Painting to Hofstra Uni-
versity in 1966:

Maximum allowed in 1966	\$ 79,944.60
Cash Contributions in 1966	<u>680.00</u>

Maximum allowance in 1966 on
Painting \$ 79,264.60

Painting valued at 150,000.00

Carryover Contribution to
1967 \$70,735.40

Total \$72,915.40

6. Hofstra College was at the time of the gift an educational organization and contributions to it were deductible under the then provisions of the Internal Revenue Code up to 30% of petitioners' adjusted gross income. Contributions to Hofstra College were further subject to the carryover provision for charitable contributions.

7. Respondent's statutory notice of deficiency adjusted the petitioners' claimed contributions as follows:

(a) It is determined that the value of the painting, titled "Susanna", donated to Hofstra college in the year 1966 was only \$2,000.00. Accordingly the charitable deductions claimed therefor in the years 1966 and 1967 in excess of this amount are reduced, as follows:

Deduction claimed for painting	\$79,604.60	\$70,735.40
Deduction allowed for painting	<u>2,000.00</u>	None
Reduction	<u>\$77,604.60</u>	<u>\$70,735.40</u>

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Stipulation of Facts

8. Attached hereto and designated as Exhibit 3-C are seven x-ray photographs of the painting entitled "Susanna."

9. Attached hereto and designated as Exhibit 4-D is a color photograph of the painting entitled "Susanna."

10. A deposition of Professor Giovanni Mariacher upon written interrogatories was taken on petitioners' motion. As to Professor Mariacher's answers to Respondent's Cross-Interrogatories, it is stipulated that:

1. The article entitled "An Unknown Susanna by Jacopo Robusti Tintoretto," was written at the request of the petitioners.

4. The petitioners paid Professor Mariacher to write the above mentioned article.

11. Professor Mariacher regularly issues certificates or endorsements of opinion on works of art.

12. Professor Mariacher is paid for certificates or endorsements of opinion on works of art.

11. The canvas on which the painting appears is of the age in which Tintoretto lived.

12. Attached hereto as exhibits 5-E, 6-F, 7-G, 8-H, and 9-I are copies of letters of endorsement by Messrs.

Stipulation of Facts

Fiocco, Suida, Mayer, Gronau, and Gluck, which petitioner states were obtained by him upon acquiring the painting. Respondent makes no objection regarding authenticity of these exhibits but does not concede the truth of the statements contained therein.

Counsel for Petitioner

MEADE WHITAKER
Chief Counsel
Internal Revenue Service

By:

THEODORE E. DAVIS
Assistant Regional Counsel
26 Federal Plaza (12th Fl.)
New York, New York 10007
Tel. No. 212-264-0264

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FINDINGS OF FACT AND OPINION

T. C. Memo. 1974-155

UNITED STATES TAX COURT

SID FARBER and NADJA FARBER, Petitioners v. COMMISSIONER
OF INTERNAL REVENUE, Respondent

Docket No. 2542-70. Filed June 17, 1974.

Richard A. Osserman and Stephen F. Huff, for the petitioners.

Powell W. Holly, Jr., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

TANNENWALD, Judge: Respondent determined deficiencies in petitioners' income tax in the amounts of \$37,307.94 and \$35,415.23 for the taxable years 1966 and 1967, respectively. The sole issue presented for decision is the valuation of a painting which was the subject of a charitable contribution.

SPR'D 6/17/74

Findings of Fact and Opinion

Some of the facts have been stipulated and are found accordingly. The stipulation of facts and attached exhibits are incorporated herein by this reference.

The petitioners are husband and wife who resided in New York, New York, at the time they filed their petition herein. For the calendar years 1966 and 1967, petitioners filed joint individual Federal income tax returns with the district director of internal revenue, Brooklyn, New York.

On December 29, 1966, petitioners donated a painting entitled "Susanna" to Hofstra College (now Hofstra University) of Hempstead, Long Island, New York. Hofstra College was, at the time of the gift, an educational organization and contributions to it were deductible up to 30 percent of petitioners' adjusted gross income and were subject to the carryover provision for charitable contributions. See section 170, Internal Revenue Code of 1954, as in effect for the taxable year 1966. Petitioners, valuing the painting at \$150,000, deducted \$79,264.60 in 1966 and carried forward \$70,735.40 as a deduction in 1967.

Respondent valued the painting at \$2,000 and determined the deficiencies accordingly.

"Susanna" is an oil on canvas, measuring 112 x 93 cm. (approximately 44 x 36.6 inches), which petitioners claim is an original work of Jacopo Robusti (known as Tintoretto). The painting portrays a nude female in a sitting position. She is wearing some jewelry and a drape lies across part of her body. In the background is a forest.

The painting is on a canvas of the age in which Tintoretto lived, i.e., the late Sixteenth Century. The painting is not signed but Tintoretto rarely signed his works. Over the years prior to the gift, the painting had been substantially damaged. Many parts have been restored, although some restoration is customarily present in old paintings. Petitioners apparently acquired the painting in the 1950's.

Tintoretto is widely recognized as one of the great Italian masters of the Sixteenth Century. He was an extremely prolific artist who had a studio and is known to have painted with assistants. Under the direction of

his son, Tintoretto's studio continued to function after his death. One of the most famous Tintoretto paintings is a fully authenticated work which now hangs in the Kunsthistorisches Museum in Vienna entitled "Susanna and the Elders." The Susanna in this painting is the same nude female in the identical position as that in the painting in question, but there are other people, animals, and a different background in the Vienna work. Tintoretto is known to have painted this same subject, in different positions, several times. In the donated work, the figure of Susanna appears to the untrained eye to be almost identical to that in the Vienna work. In fact, one of petitioners' "experts" computed the size of the two figures and found them to be identical.¹

¹

His method for reaching this conclusion is somewhat in doubt. The following excerpt is from cross-examination:

Respondent's counsel: Now, how do you know that the two figures have the same dimensions?

Expert: Because I know the dimension of the -- of the Vienna painting, which is a published figure, and I physically measured parts of the body in this one, and computed on a mathematical basis the --

Q. But you did not --

A. Exact size of the figure in Vienna, and it corresponds to this one.

Q. You did not actually measure the size of the figure in the Vienna painting?

A. I did by computation.

Q. But not actual measurement?

A. No, I did not.

At the outset, we think certain comments are in order. We have previously made clear that the settlement process is obviously more conducive to the proper disposition of disputes such as this because a valuation issue is "inherently imprecise and capable of resolution only by a Solomon-like pronouncement."

See Morris M. Messing, 48 T.C. 502, 512 (1967). The fact that the underlying dispute herein relates to the authenticity of a painting and its effect on value, rather than the establishment of value in the normal context, in no way lessens the need for resolution by way of settlement. Indeed, as we have also made clear, "there is good reason for our not entering into such a difficult area [authenticity], particularly where * * * the evidence is conflicting," which is the case herein. See Eugene P. Mathias, 50 T.C. 994, 998 (1968).

What is more to the point is the fact that the parties herein ~~have~~ seemingly made a conscious effort to force us to assume a role which is certainly distasteful, if not unwise. The evidence consists almost entirely of testimony by various "experts" as to

whether the painting is by the hand of Tintoretto and, in a general way, as to the purported fair market value at the date of the gift to Hofstra. Despite the fact that petitioners were invited by the Court to do so, no evidence was presented as to the circumstances under which the petitioners bought the painting, how much they paid for it, or the value at which it was insured in December 1966. Nor were we told how the painting was handled by Hofstra, i.e., whether and how it was displayed, aside from a passing reference by one of petitioners' "expert" witnesses that, when he saw the painting for the first time in late 1973, "it was stored in the museum." Granted that such elements may have only a tangential impact on the determination of fair market value on a given date, they have a pertinency which we think should not have been cavalierly ignored. See Publicker v. Commissioner, 206 F. 2d 250, 254 (C.A. 3, 1953); Daniel S. McGuire, 44 T.C. 801, 810 (1965).² Even the "expert" testimony as to fair market value was not supplemented by available evidence from catalogues, which are known to

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Cf. Charles A. Weil, T.C. Memo. 1967-78.

exist, containing the details of sales of paintings of well-known artists during a reasonable period in which the date of the gift to Hofstra occurs. Compare Eugene P. Mathias, supra, 50 T.C. at 996-997, where such supplementary evidence was submitted to the Court. We can only conclude that the primary guideline for presentation of the case by both parties was that the less, rather than the more, the Court knew, the better.

In their effort to carry their burden of proof, petitioners offered three witnesses, one of whom was deposed through written interrogatories and cross-interrogatories, and letters of endorsement from five Tintoretto experts. Four of these letters were executed in 1928 (one having been reaffirmed in 1970) and one in 1949. Respondent disputes their conclusions, but he has stipulated to the authenticity of these "expertises." Accordingly, they may properly be considered as part of the evidence, subject to our determination of the weight to be accorded them in light of their clearly hearsay status. J. Willard Harris, 46 T.C. 672, 674 (1966). Respondent called two witnesses.

We decline to enter the battle over the relative qualifications of the "expert" witnesses, except to say that we have considered these as factors in our ultimate determination. Although, in certain respects, each witness' testimony was informative, we were left with an overall feeling of dissatisfaction and consequent frustration. For various reasons, revealed by the record, we were unable to put much confidence into any witness' study of the painting or his conclusions.³ We note in this connection that the "expert" witnesses gave the painting only the most cursory examination and that none of them had even heard of the painting until 1973, when they were brought into the case, or, as regards the deposed witness, when petitioners exhibited the painting in Italy in 1964. There is no provenance of the work and apparently no mention of it in any art literature or catalogues. Compare Eugene P. Mathias, supra.

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The witness, who was subjected to interrogatories, was less than forthcoming with respect to an article he had written on the subject painting. He refused to answer at whose request he had written the article, he did not know if it had been published, and he refused to state whether he had been paid for writing it. He also stated that he had "never met Contessa Navarro," although that person was also identified to him in the interrogatory as "Mrs. Sid Farber." The foregoing is to be contrasted with the stipulation of the parties that the article was written at the request of the petitioners and that they paid the witness for it.

Not only were the "expert" witnesses in conflict as to the authenticity of the painting but they were diametrically opposed on its condition. Faced with this irreconcilable situation, we watched one of respondent's witnesses conduct a black light examination in the darkened courtroom. Based on this examination, we found as a fact that there had been a substantial amount of restoration to the painting. Cf. Eugene P. Mathias, supra, 50 T.C. at 998. Much of this was of poor quality. Although this amount of restoration may not be unusual for a painting this old, it is a factor to be considered in valuing the work.

Finally, one very important factor in determining the value of any given painting is the sale prices of comparable works which were sold during the same time period as the date of the gift. See Estate of David Smith, 57 T.C. 650, 659 (1972), on appeal (C.A. 2, Apr. 25, 1974). Petitioners' "experts" submitted their own lists of auction sales and asked us to be guided thereby. Though respondent has not challenged the veracity of these lists, we refuse to base our valuation on the sale prices. The vast majority of listed sales are

totally incomparable. They are by different artists (such as Rembrandt, Modigliani, Van Gogh, Manet, Monet, Picasso, Renoir, Toulouse-Lautrec, and Velazquez), from different schools and periods, and many are widely recognized as true masterpieces (such as Rembrandt's "Aristotle Contemplating the Bust of Homer"). We would not begin to consider these paintings comparable. Also, on petitioners' "experts'" lists were two Tintorettos, one sold at auction on December 7, 1950 for \$300,000, the other on May 24, 1963. Petitioners' first "expert" said the latter painting sold for \$150,000, the second said it sold for \$160,000.⁴ Respondent's second "expert" testified that four "authentic" Tintoretos sold at auction between 1969 and 1972 for \$13,000 to \$23,000. We were furnished no evidence as to the physical condition of any of these six Tintoretto paintings, only their sizes. We do not know their relative importance, the extent to which their authenticity may have been open to question, the circumstances surrounding the sales, or other factors which may have influenced the particular sales prices.

⁴

Although the mere existence of this discrepancy has not influenced our decision herein, we are constrained to observe that the submission of supplementary catalogue evidence (see pp. 6-7, supra) presumably would have established the known fact.

Thus, while auction prices are evidence of value in the art field (Eugene P. Mathias, supra, 50 T.C. at 999; Estate of David Smith, supra, 57 T.C. at 658, n. 6), we have not been given much to work with on the record presented herein.

We see no point in further dissecting the contradictory testimony which was submitted or in detailing all of the factors which we have taken into account. We move directly to a determination of the ultimate fact upon which disposition of this case depends, namely, the fair market value of "Susanna" on December 29, 1966. We discharge our responsibility based upon the entire record and our observatory evaluation of the witnesses. We emphasize that our determination is based exclusively upon what the particular record herein shows -- and also does not show -- and that such determination is solely for the purposes of this case without in any way implying that it would be on the basis of another record containing different facts and different testimony.

Furthermore, we again refuse to decide the underlying question of authenticity; we believe there is sufficient

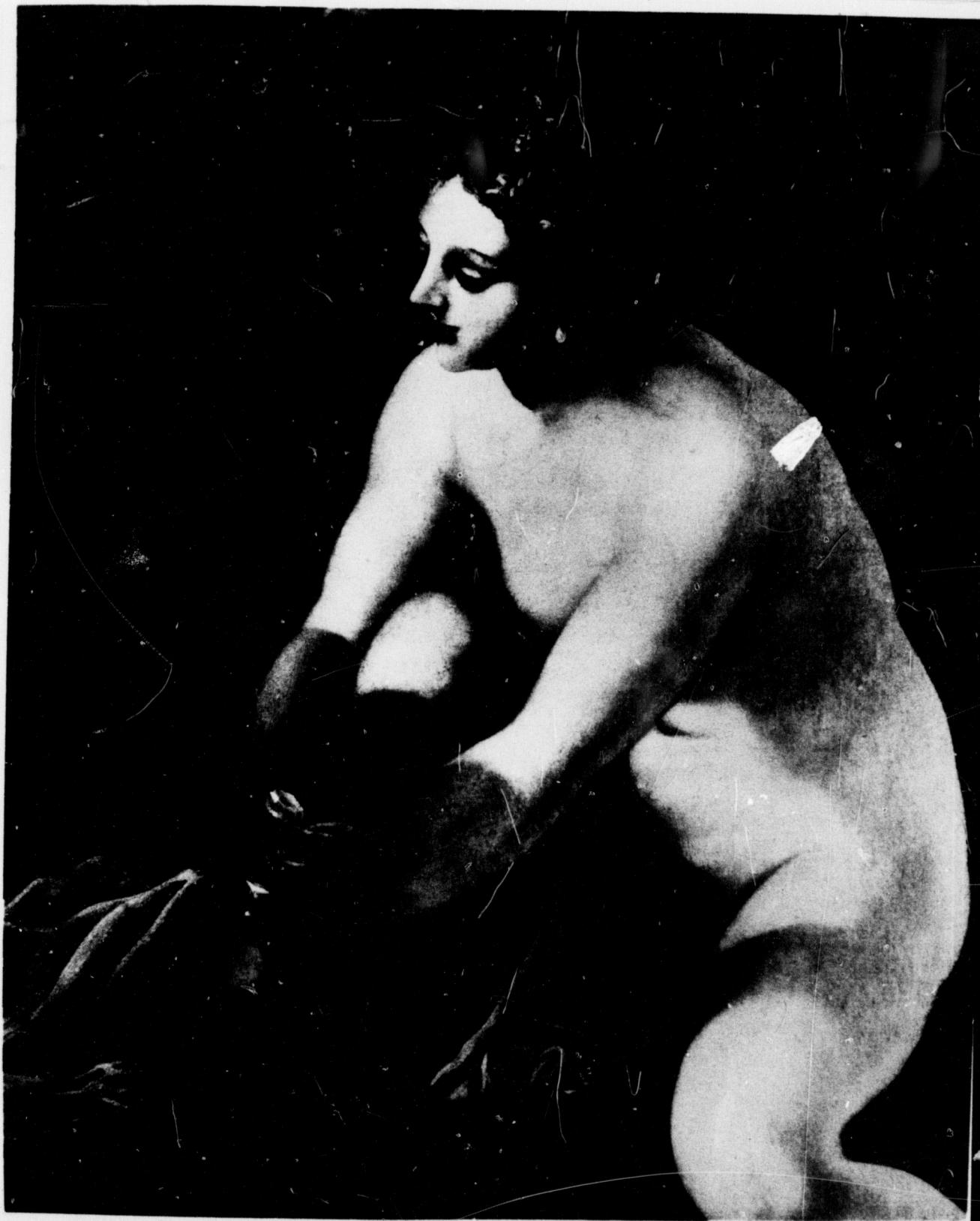
Findings of Fact and Opinion

conflict on this record to conclude that a serious depressant on market value did exist on the critical date. See Eugene P. Mathias, supra, 50 T.C. at 998. We think that a willing buyer and a willing seller, acting solely on the basis of the information submitted to this Court in this case, would have arrived at a price not in excess of \$10,000. Accordingly, we find as an ultimate fact that the fair market value of "Susanna" on December 29, 1966 was \$10,000 and that petitioners' deduction should be limited to this amount.

Decision will be entered
under Rule 155.

A 28

EXHIBIT 5-E--EXPERTISE OF FIOCCO



Venice 15. February. 1922

si tratta, nella tela qui fotografata
(Inv. 112 x 93), di una precisa edizione
della tessitura del Van Gogh's
Marsiglia. Bellissimo lavoro di mano
del Tintoretto, se rispara l'altra
nella espressiva bellezza della
testa, a cui giava lo sforzo
orario -

Giuseppe Ficco
dell'Università di Venezia

A 30

Exhibit 5-E

BERLITZ TRANSLATION SERVICE
A DIVISION OF THE BERLITZ SCHOOLS OF LANGUAGES OF AMERICA, INC.



No. 14340

40 WEST 51ST STREET
NEW YORK, N.Y. 10020

PHONE: (212) 765-1000

Vienna, February 15, 1928

In the canvas photographed here (cm. 112 x 93), we have a first edition of the Susanna of the Kunsthistorisches Museum. A lovely work from the hand of Tintoretto which surpasses the other in the very beautiful expression of the head, set off by the dark background.

Fiocco
of the University of Florence.

Come già avrei scritto nel 1928,
d'accordo con A. L. Mayer, col Granau
e col Guidi, considero la tela qui
riproposta, di cm. 112 x 93, opera
bellissima di Tacopo Tintoretto,
tipica per il suo luminoso pa-
scibile del grande maestro.
Per questo suppongo lo stesso eseguita
di Vienna.
Ne fanno le vitalità la
luminosità del fondo brunito
e delle figure, in cui l'opera
risalta nettamente dall'escur-
pione austriaca.

G. Guido

TRANSLATION

As I have already written in 1928, in accord with A. L. Mayer, Gronau and Suida, I consider the canvas hereupon reproduced a very beautiful work by JACOPO TINTORETTO, typical for its luminous touch particular to the great Master. Because of this it is superior to the similar version in Vienna.

It is enhanced by the vitality, the limitation of the wooded background and the fountain, by which this work clearly differs from the austrian version.

(signed) G. FIOCCO

Unseitig abgebildetes Gemälde, eine junge
Frau im Bade, darstellend - auf Leinwand
112 x 93 cm - ist ein charakteristisches und
sehr gut erhaltenes Original des Jacopo
Tintoretto. Die Gestalt stimmt mit der
Hauptfigur auf dem bekannten Bilde
der Susanna mit den beiden Alten in
der Wiener Galerie überein. Analoge Fälle
sind im Werke des Jacopo Tintoretto
bekannt. So befindet sich in der Sammlung
Lang in Amsterdam eine Einzelfigur
einer sitzenden Frau, die als Muse in
dem vielfigurigen Bilde der Dresdener
Galerie wiederkehrt. In beiden Fällen
ist die Einzelfigur in ihrer unmittelbaren
Wirkung auf Temperausentwicklung
Farbengebung dem grösseren Bilde
überlegen. Für die Kenntnis von Tintoretto
Schaffensart besitzt das vorliegende, mit
so vorzügliche Meisterschaft direkt ausgeführte
Gemälde sehr grosse Bedeutung.

Wien, März 1928

Wipplin Suida

Translation from German

The painting as shown on the reverse, representing a young woman in the bath - on canvas, 112 x 93 cm - is a characteristic and very well preserved original by Jacopo Tintoretto. The figure coincides with the main figure in the well-known painting of Susanna with the two old men in the Vienna gallery. Similar cases in works by Jacopo Tintoretto are known. So, e.g., the Lanz collection in Amsterdam contains a single figure of a sitting woman who reappears as the old muse in the many-figured painting in the Dresden gallery. In both cases the single figure in its direct effect and lively treatment of colors is superior to the larger painting. For the knowledge of Tintoretto's creative work the present painting created in a bold manner with superior mastery is of very great importance.

Vienna, March 1928

Weilhelm Suida

112, x 73.

Der Gemälde auf Leinwand h. 1.12 br. 0.93, der die umstehende Photographie wiedergibt, ist nach meine
Auffassung ein eisengrau-hölziger Reitstil des Jacopo Tintoretto.
Ganz stimmt die Figur in der Haltung daran,
mit den berühmten "Tosavas" des Wiener Kunsthistorischen
Museums zu sein, aber ein sorgfältige Vergleich zeigt
sie bald, daß das vorliegende Werk eine spätere,
technisch reifere Version ist. Es ergibt sich in
der Wiedergabe des Haars, des Schakals, besonders
am Hals, in der freieren Malerei der Atemberinde
und des Turches wesentliche Unterschiede gegenüber
dem relativ frischen Bild der Wiener Galerie.

Die Landschaftsbehandlung auf dem vorliegenden
Bild ist schon verblüffend modern, siehekt vor
allem manches der englischen Malerei des 18. Jahrh.
vorwegzunehmen.

August F. Mayer

23. III. 28.

Translation from German

112 x 93

The painting on canvas 1.12 high and 0.93 wide as shown on the reverse photo is according to my opinion a work by Jacopo Tintoretto. It is true that the figure in its posture coincides with that of the famous "Susanna" in the Vienna Museum of Art, but a thorough comparison shows very soon that the present work is a later and artistically more mature version. Considerable differences are found, as compared to the relatively early painting of the Vienna gallery, in the treatment of hair, shadows, in particular on the neck, in the freer style of painting the bracelets and the cloth. The treatment of the landscape in the present painting has become amazingly modern and seems primarily to anticipate in certain respects English painting of the 18th century.

March 23, 1928

(signed) August L. Mayer

112-193

Marschland viele gebräus, wir
im Original hörnbar Bild der Susanna im
Bade habe ich für ein eindrückliches Bild
von Federico Tintoretto. Es ist mir wohl bekannt,
dass die Figuren in den venezianischen Bildern mit
der Susanna in der Wiener Galerie genau übri-
gen stimmt; nur da Landschaft ist völlig an-
ders und diese ist so frei und lebhaft, dass
wie die Malerei des Frans Halsers so frisch und
unmittelbar, dass ich daraus die originale
Abart des Meisters erkenne. Die Erhaltung
des Bildes ist sehr gutig zu bezeichnen.

San Donato di Fiesole

30. IV. 1928

Gronau

Translation from German

112 x 93

The painting of Susanna in the bath which is shown on the reverse photo and which is known to me in original I consider to be a work of Jacopo Tintoretto. I am well aware of the fact that the figure in its essential features exactly coincides with the Susanna in the Vienna gallery; only the landscape is completely different and it is painted with such freedom and boldness just as the woman's body is painted with such vigor and directness that I see in this the original work of the master. The preservation of the painting must be regarded as very favorable.

San Domenico die Fiesole

Gronau

April 30, 1928

Santa Monica, Calif., Aug. 30 1949

I have carefully examined the picture on canvas, 112 x 93 cm., reproduced in this photograph, and I consider it a beautiful characteristic work by Jacopo Tintoretto done entirely by the master's own hand. The male figure corresponds almost exactly to that of the renowned painting of Susannah in the Vienna Kunsthistorisches Museum; but the masterful treatment of the naked body as well as the most spirited touch of the landscape (which is quite different here) indicate a decidedly later style than the Vienna picture which has to be dated not much later than 1560. So the master seems to have either resumed the subject after some time or rearranged the original study from life by transforming it into the style of his later period.

The state of preservation of the picture reproduced is excellent.

Gustav Gluck

A 40

PETITIONERS' EXHIBIT 10--APPRaisal OF ELIZABETH IVES BARTHOLET

Steven Huff & Richard Osser wear - 421-4100
Pryor, Braun, Cashman + Sheeran 410 Park 10022

John La Marr

From

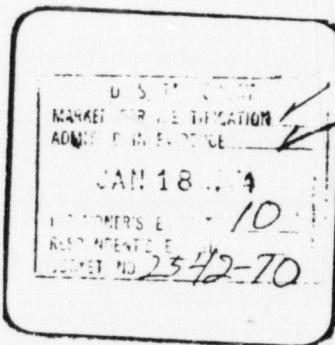
MRS. E. IVES BARTHOLET
55 EAST 76th STREET
NEW YORK, N. Y. 10021
BUTTERFIELD 8-4642

For SIDNEY FARBER.

SUBMITTED by

ELIZABETH IVES BARTHOLET

POSTMASTER: THIS PARCEL MAY BE OPENED FOR POSTAL INSPECTION IF NECESSARY.
RETURN POSTAGE GUARANTEED.



Appraisal

THIS IS TO CERTIFY that I, Elizabeth Ives Bartholet (art consultant)
self employed
of the firm of 55 East 76 Street, New York, New York 10021

located at city or town Butterfield zone
state telephone number 4542

am a member of APPRAISERS ASSOCIATION OF AMERICA, INC. and a qualified appraiser of the articles listed below; that I have carefully examined said articles of personal property at the request of

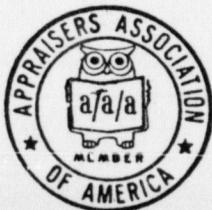
name Sidney Farber

address 25 Central Park South, New York, New York

and in my judgment their current values are as follows,

ARTICLE	DESCRIPTION	APPRaised VALUE
See contents -----		

Note:



Signed

Date

Elizabeth Ives Bartholet
Appraiser
January 17, 1974

Report On Susanna Attributed to Tintoretto (Jacob Robusti),
Venetian 1518-1594

Introduction - The painting of Susanna, which I examined in my premises, depicts a beautiful nude seated on the right of the canvas and facing from right to left. The figure commands the canvas stretching from the lower right hand corner to the upper center. All of the figure except the lower part of the left leg is shown. Around each wrist of the figure is a bracelet. She leans forward slightly her left leg bent and lower than the seated body. Her right leg is bent so that the knee is breast high. Her right hand holds a drapery around her right leg. Her left hand rests on her right foot. Shadowy trees and a bit of sky form the background. The colors are warm. Italian School.

Despite some overpainting, which is quite usual, it is in a very fine state of preservation. It is my opinion that at the time said painting was gifted to Hofstra University on December 28, 1966 it had a value of \$200,000.

My opinion is based on the following:

1) Authenticity - It is almost impossible to determine absolutely that any painting is by the hand of an old master, especially one dating back to the 1500's. In order to determine authenticity it is necessary to rely on expert opinion. Expert opinions may from time to time differ and so it is incumbent to determine the relative merits of the experts who examined and opined with respect to any particular old master.

There are six expertises on this painting. Five are as is appropriate written on the reverse side of photographs of the painting. The sixth is in the form of a written expertise and an article.

The painting in question was examined in 1928 by four of the outstanding experts at the time, Giuseppe Fiocco, Per W. Suida, August L. Mayer and Georg Gronau. A summary of some of their writings and positions is annexed hereto as Exhibit A. Suffice it to say that Giuseppe Fiocco was in charge of the most important exhibition of Tintorettos held in this century and perhaps ever.

That exhibition was held in Venice in 1937. August L. Mayer is an art historian of great renown. Per W. Suida was both an important art historian and Director of the Kunsthistorische Museum in Vienna, Austria, and Dr. Georg Cronau was Director of the Museum of Hanover, Hanover, Germany.

In addition to these expertises, in 1949 the painting was further examined by Professor Gustav Gluck, whose more complete biography is found in Exhibit A. He too was a Director of the Kunsthistorische Museum in Vienna, Austria. Finally and most importantly, the painting was examined by Professor Giovanni Mariacher, who not only authenticated the painting, but wrote a short article about it. Professor Mariacher was at the time he gave the opinion and still is Director of the Civic Museums of Venice. His importance can be understood when one realizes that there are relatively few paintings by Tintoretto any place other than Venice. However, in Venice there are well over a hundred such paintings. In fact, it has been said and I believe that approximately 80% of Tintoretto's paintings are contained in Venice in its various museums and churches. According to the Guide Ardo Venezia by G. M. Ortolani on the very staircase leading to Professor Mariacher's office, which he passes every single day, there are paintings by Tintoretto.

Of further note is that the most important Susanna painted by Tintoretto is undoubtedly the one in the Vienna Kunsthistorische and two of the expertises are by former directors of that museum.

It is very easy for an expert to say that a painting is not by a person to whom someone wants to attribute it because it is usually impossible to prove that it is by the hand of the old master. It is more difficult for an expert to say that it is by the hand of the old master. He is placing his reputation in jeopardy by giving such an opinion. Thus, the importance of the expertises cannot be undervalued. Of my own knowledge I know of an instance where the grandson of a painter having seen a painting attributed to his grandfather purchased by a friend exclaimed that it was not by his grandfather. The painting was returned to the gallery that sold it. After consideration, however, of the relative merits and abilities of the experts who had authenticated the painting and the grandson, who was also himself knowledgeable in art, it was determined that the grandson was probably incorrect. The painting, even though the subject of this dispute, was resold at at least the same price for which it was originally sold.

Annexed as Exhibit B are the signed opinions and translations thereof of the aforementioned experts.

Another factor in authenticating a painting is whether or not it has ever been exhibited. This painting was on public display in Milan, Italy in March and April, 1964, under the official auspices of the Government of the City of Milan, Italy and further in Athens, Greece in June, 1966, under the patronage of the Ministries of Foreign Affairs and National Education. Thus shortly prior to the gift to Hofstra University this painting was on public display.

While the authenticity of a painting of this nature can never be absolutely free of doubt, the expertises aforementioned and the exhibition of the painting would in my opinion have been sufficient as of December 28, 1966 to authenticate the picture for the purposes of sale. If I were to have acted as an art consultant in the purchase of this picture in 1966, I would have been willing to rely upon the expertises of the deceased experts as well as the then living experts, Giovanni Mariacher and Giuseppe Fiocco. Professor Fiocco, it should be pointed out, died after 1966 after having reopined as to the authenticity of the picture.

2) Quality of the Picture - As above set forth, I have examined this painting and found it to be a beautiful painting. I have also found that it is in a remarkably fine state of preservation.

3) Comparative Values - There have been very few sales of Tintoretto's concurrent with the date of the gift by Mr. & Mrs. Farber. However, there is one Tintoretto, entitled Christ By The Pool Of Bethesda. This is an oil on canvas 26 1/2" X 30 1/2" sold May 24, 1963 by Christie, Manson & Woods; London, England, for approximately \$150,000. That painting was approximately 50% smaller than the painting gifted by the Farbers and of course the size of a work of art is also determinative of its value. Based upon that sale and the other sales set forth on Exhibit C annexed hereto and made a part hereof, the expertises which were available in 1966, the quality of the picture and the fine state of preservation, I have determined the value of the painting, as well as considering the scarcity of available works of Tintoretto in the open market.

I believe myself qualified to make this appraisal because I am a member of the Appraisers Association of America. I have been an art consultant for over 15 years with an office at 55 East 76th Street, New York, New York. For the following reasons I consider myself equipped to appraise the Susanna by Jacopo Robusti Tintoretto, cm 112 X 93, oil on canvas, as reproduced in Arte Europea da Una Collezione Americana, Edizioni dell'Ente Manifestazioni Milanesi, copyright 1964, page 21:

A. I have made considerably more than 650 appraisals. All of these have been incidental to my work as consultant and gallery owner. (Some of these appraisals have been made in partnership with Ward Eggleston with whom I work from time to time.)

B. Among these appraisals were works by Peter Paul Rubens, Pierre Mignard, Francesco Guardi, Jean Marc Nattier, Casper Netscher, Canaletto, Anthony Van Dyck, Giovanni Baptiste Camille Corot, Titian, Sir Joshua Reynolds, Thomas Gainsborough, John Constable, Francois Boucher, etc., etc., etc..

C. I have appraised for such clients as the granddaughter of John D. Rockefeller, Mrs. Benjamin D. Gilbert, Rudolph Fluegge, Bencil La Farge, etc., etc., etc..

Eizabeth Ives Bartholet
Mrs. E. Ives Bartholet
Member, Appraisers Association
of America

Sworn to before me this
17th day of January, 1974.

Stephen Huff

STEPHEN F. HUFF
Notary Public - State of New York
No. 60-1234815
Qualified in Westchester County
Commissioned in New York County
Commission Expires March 30, 1975

EDUARDO MARIACHI
1877 - 1961

Formerly Director of the KUNST HISTORISCHE MUSEUM,
VIENNA, AUSTRIA.

AUTHOR of:

An important text Book "LEONARDO und SIM
KREIS" München 1929

A text book on the Venetian Old Master
"TITIAN", Cusa Editrice Valori Plastici, Rome 1953

Curator of the SAMUEL KRESS COLLECTION

Author of the Official Catalogue of the
JOHN and MARIE RINGLING MUSEUM OF ART, SARASOTA, FLORIDA 1949.

Catalogue Italian Art SAMUEL KRESS COLLECTION, SEATTLE ART MUSEUM, SEATTLE, WASHINGTON, 1952.

Catalogue Italian Art SAMUEL KRESS COLLECTION, Museum of Fine Arts, HOUSTON, TEXAS.

Catalogue Italian Art SAMUEL KRESS COLLECTION, De Young Memorial Museum San Francisco, California

Author of many articles on Italian Painting
of the 15th, 16th, 17th and 18th century in Art Magazines, such as Burlington's, Connoisseur, Pantheon, Art News, New York, etc..etc..

Professor Dr. GIOVANNI MARIACHER

Director of all CIVIC MUSEUMS OF ART, VENICE, ITALY

Official Catalogue of paintings of the XIVth to the
XVIth century in the Venetian Museums.

Special Catalogue of paintings in the PALAZZO DUCALE,
VENICE edited in Florence in 1950.

Author of text book on Venetian Old Master "PALMA il
VECCHIO" (1480 - 1528), Editor Bramante, Milan 1968

EXHIBIT "A"
(3 PP.)

Petitioners' Exhibit 10

Professor GIUSEPPE PIOCCO
1864-1970

Professor of HISTORY OF ART, University of PADUA, PADUA
ITALY.

Director and Curator Galery of Old Masters, The CINI
FOUNDATION, VENICE, ITALY.

AUTHOR of:

Official Catalogue of Works by the Venetian Old Master ANDREA MANTEGNA (1431-1506). Hoepli, Milan 1937.

Official Catalogue of the 16th Century Venetian Old Master PAOLO VERONESE, Rome 1934.

Official Catalogue of the Works of Venetian Old Master VITTORE CARPACCIO (1450-1525).

Official Catalogue of the Works of Venetian Old Master BARTOLOMEO VENETO (1502-1555).

Text book on Venetian Old Master GIORGIONE (1477-1510), Bergamo 1948.

Text Book on Venetian Old Master ANTONIO FORDE-NONE, Padova 1923.

Several other Books on 18th Century Venetian Masters such as, GUARDI, CANALETTO, MARIESCHI, TIEPOLO, LONGHI, etc..etc..

Inumerable articles on Old Masters in Art Magazines such as CONNOISSEUR, BURLINGTON, PANTHEON, ARTE VENETA, etc..etc..

Professor Dr. GRONAU GEORG
1868 - 1944

Director of Museum of Hanover, Hanover, Germany

AUTHOR of:

Catalogue of the Works of RAPHAEL SANZIO, Berlin 1924.

Official Catalogue of the Collection of Old Masters of HENRY GOLDMAN, Berlin 1924.

Catalogue Raisonne of the Works of the Venetian Old Master "TITIAN" (1485-1576)-Editor E.Hoffman & Co., Berlin 1900.

Text Book on the Works of Venetian Old Master GIOVANNI BELLINI (1430-1516), Klazziker d r Kunst, 1930.

Catalogue Raisonne of the works of Old Master ANTONIO CORRUGGIO, Stuttgart 1907.

Text Book on the Ventian BELLINI FAMILY of Painters.

Professor GUSTAV GLUCK

Formerly Director of the KUNST HISTORHISCHE MUSEUM, VIENNA,
AUSTRIA.

AUTHOR of:

Text Books on PETER PAUL RUEENS.

Book on Italian Renaissance Painters

Many articles on Italian, German and Flemish Old Masters in such Magazines as CONNOISSEUR, BURLINGTON, PAN-
THEON, etc..etc..

Dr. AUGUST L. MAYER
1885 - 1944

AUTHOR of:

Textbook on "TINTORETTO" (Jacopo Robusti) by Dr. August L. Mayer and Von Erich Con Der Bercken. Publisher R. Piper & Co. MUNICH, 1923.

Catalogue Raisonne of Works by Domenico Theotocopuli El Greco.

Textbook on Spanish Masters of the 16th to the 19th century. Publisher N. Y. Hispanic Society of America. NEW YORK.

Catalogue Raisonne of Works by "Giuseppe Ribera". LEIPZIG, 1908.

Catalogue Raisonne of Works by "Murillo". Publisher Dolphin - Verlag. MUNICH.

Catalogue Raisonne of Works by Velazquez, Diego Rodriguez De Silva (1599 - 1660). Publisher Faber & Faber, Ltd. LONDON.

Catalogue Raisonne of Works by Goya y Lucientes, Francisco. Publisher Proplyaeen - Verlag. BERLIN, 1924.

Official Catalogue of the Spanish paintings in the collection of Contini Bonacossi. ROME, 1930.

Many articles on Spanish and Italian paintings of the 16th to the 19th century published in various art magazines.

EXHIBIT B TO APPRAISAL

Contents of Exhibit B, signed opinions and translations of experts, is contained elsewhere in this Appendix.

PRICE LIST - SALE 2062 - ERICKSON COLLECTION OF OLD MASTER PTGS
PARKE-BERNET GALLERIES INC - NOVEMBER 15, 1961 - 8:00 PM

- #6 Lucas Cranach. The Elder - 1472-1553 - Saxon Princess Sibylle of Clives, oil cradled panel - 203/4"x15" \$105,000.00
- #7 Rembrandt. Harmensz Van Rijn Dutch - 1606-1669 Aristotle Contemplating the Bust of Homer. Oil 56 1/2"x 533/4". \$2,300,000.00
- #9 Carlo Crivelli. 1430-1493/5. Venetian tempora on arched panel. 41"x17 1/4". \$220,000.00
- #11 Pietro Vannucci (Perugino) Umbrian. 1445-1523. St. Augustine with Members of the Confraternity of Perugia. Oil on panel. 35"x25". \$125,000.00
- #12 Rembrandt Harmensz Van Rijn. Dutch. 1606/1669. Portrait of an Old Man. Oil on panel. 15"x10 1/2". \$180,000.00.
- #13 Frans Hals. Man with a Herring. Dutch. 1580-1666. Oil. 34 1/2"x27 1/2". \$145,000.00.
- #16 Jean Honore Fragonard. French. 1732-1806. La Liseuse. Oil. 32"x25 1/2". \$875,000.00.
- #19 Jean Marc Nattier, French. 1685-1766. La Marquise de Baglion, as Flora oil. 54"x413/4". \$175,000.00

A Modigliani oil - 21". Lot 69. 1973. July. size 21"x18" (smaller). "La Follette in Blue", sold at Sotheby's, London for \$250,000.00.

A Modigliani oil. 24"x18", executed circa 1917.

"Jeun Femme Au Corsage Bleu" currently for sale through E. I. Bartholet at \$250,000.00.

Auction sales of Venetian Old Masters
of the 16th century:

JACOPO RONUSTI called "TINTORETTO" 1518-1594

Oil painting " Christ Blessing the People ",
measuring 66.5 x 76.5 centimeters, sold on May 24, 1963
at Christie, Manson & Woods, London, for Guineas 45,000.-,
about \$ 155,000.-

JACOPO DA PONTE, called "BASSANO" 1515-1592 (Venetian)

Oil painting " The Adoration of the Shepherds ",
measuring 37½ x 56 inches, sold on October 15th, 1970,
at Christie, Manson & Woods, Via Miani, Rome, Italy,
for \$ 226,000.-

Oil painting " The Flight into Egypt ", measuring
62 x 78 inches, sold on June 26th, 1970, at Christie, Manson
and Woods, for \$ 240,000.-

GIOVANNI BATTISTA TIEPOLO ,18th Century.

Oil painting sold at SOTHEBY'S, LONDON on March 24th,
1965, for \$ 250,000.-

A 51

PETITIONERS' EXHIBIT 11--CATALOG EXCERPTS

MASTERPIECES OF ART

1900



COLLECTION DE NAVARRO

ATHENS, ZAPPION PALACE - JUNE 19

PLATE 10

PAINTING REFERRED TO BELOW
APPEARS ON PAGE 28 OF THIS
APPENDIX

Prof. GIUSEPPE FIOCCO (February 15th, 1928) believes this painting to be a first version of the «Susanna and the Elders» in the Vienna Kunsthistorisches Museum. He calls it a very beautiful work by the hand of Tintoretto, which is superior to the other in the enchanting expression of the head against the dark background.

Prof. WILHELM SUIDA (March 1928): «... this is a characteristic original and very well preserved work by Jacopo Tintoretto. It is a first version of the Vienna 'Susanna and the Elders' and very near to the 'Seated Lady' in the Lang Collection in Amsterdam and the Dresden Tintoretto.»

Dr. AUGUST L. MAYER (March 23rd, 1928) recognizes it as a work by the hand of Tintoretto but, contrary to Prof. Fiocco's opinion, he believes this to be a subsequent version to the Vienna painting.

Dr. GEORG GRONAU notes that the landscape belongs to a later period than the one in the Vienna painting, but not later than 1560.

Prof. GUSTAV GLUCK is of the opinion that the Master had either executed this picture after the Vienna version or worked again, much later, on an earlier original, thus giving it the appearance of a late work.

A 53

PETITIONERS' EXHIBIT 13--APPRaisal OF JOHN LA MARRE

INVENTORY AND APPRAISAL

JOHN LAMARRE
520 FIFTH AVENUE
NEW YORK, N.Y. 10036
MU 3-3421

STATE OF NEW YORK)
: SS
COUNTY OF NEW YORK)

JOHN H. LAMARRE, being duly sworn, deposes and says, that he has for more than thirty-five (35) years past been actively engaged in the appraisal business.

He completed his graduate studies in the History of Fine Arts at New York University, lectured on the subject of Art and Antiques at Brooklyn College, City College and currently at New York University and at the Metropolitan Museum of Art. He was also engaged in intensive study of Italian painting in Venice with particular emphasis on Tintoretto over a period of years. He shares the opinion of the other authorities in the genuineness and superlative quality of the work under consideration. By reason of his association with the appraisal business and his active interest and participation therein, as well as having made or participated in the making of numerous appraisals for gift tax, estates, insurance and other purposes, he has special knowledge of the value of the work of art set forth in the annexed schedule.

That he has personally directed and supervised the appraisal of the item set forth in said schedule, and that said property represented as having belonged to

MR. AND MRS. SID FARBER

was, at the date of the appraisal, upon the premises at Hofstra University, Hempstead, L.I.; N.Y.; that the schedule hereto annexed is a true copy of said appraisal; and that the appraisal value of the item is set opposite the same; and that the said value was the fair market value of said item as the same was at the date of gift, December 28, 1966.

TOTAL VALUE: \$ 250,000.00

John H. LaMarre

Sworn to me this

day of January, 1974

A 55

Petitioners' Exhibit 13

OIL PAINTING ON CANVAS BY TINTORETTO
(JACOPO ROUSTI), VENETIAN, 1518-1594
"SUSANNA"

Nude figure of the subject wiping her
feet, presumably after the bath;
landscape background.

112 cm. x 93 cm.

(In remarkably fine state of
preservation despite the presence of
some overpainting which is not unusual)

\$ 250,000.00

In my judgment, there is no doubt that the above amount or
more would not only be realized at public auction, but would
be guaranteed by leading auction galleries throughout the
world.

In light of the fact that a comparable Tintoretto has not been
offered at public sale concurrent with the date of presentation,
we can point out that figure painting by lesser and certainly
not greater artists have fetched as much and considerably more.
We cite the following applicable records of sales:

TINTORETTO (JACOPO ROUSTI)
"CHRIST BY THE POOL OF BELHESDA"
Oil on canvas; 26 1/2" x 30 1/2"
May 24, 1963; Christie, Manson & Woods; London

\$ 160,000.00

TINTORETTO (JACOPO ROUSTI)
"PORTRAIT OF THE AMBASSADOR GIOVANNI-
BATTISTA GUADAGNI"
December 7, 1950; Nathan Katz; Paris

\$ 300,000.00

GOGH, VINCENT VAN
"PORTRAIT OF MLE. RAVOUS"
Oil on canvas; 29 1/4" x 20 7/8"
June 24, 1966; Christie, Manson & Woods; London

\$ 441,000.00

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Petitioners' Exhibit 13

MANET, ÉDWARD "LA BONNE PIPE" Oil on canvas; 108 cm. x 80 cm. October 14, 1965; Parke-Bernet, New York	\$ 450,000.00
MODIGLIANI, AMEDO "LA FILLE DU PEUPLE" Oil on canvas; 102 cm. x 65 cm. November 25, 1965; Paris	\$ 240,000.00
MONET, CLAUDE "SUR LA FALAISE - MME. MONET ET SON FILS JEAN" Oil on canvas; 100 cm. x 81 cm. June 15, 1965; Palais Galliera; Paris	\$ 504,000.00
PICASSO, PABLO "THE THREE BATHERS" Oil on board; 31 1/2" x 39" March 23, 1966; Parke-Bernet; New York	\$ 115,000.00
REMBRANDT, HARMENSZ VAN RIJN "ARISTOTLE CONTEMPLATING THE BUST OF HOMER" Oil on canvas November 1961; Parke-Bernet; New York	\$ 2,300,000.00
REMBRANDT, HARMENSZ VAN RIJN "PORTRAIT OF TITUS" Oil on canvas; 63 cm. x 52 1/2 cm. March 19, 1966; Christie, Manson & Woods; London	\$ 2,234,400.00
RENOIR, PIERRE-AUGUSTE "LA ONGEUSE" Oil on canvas; 18 1/4" x 15 1/4" June 21, 1966; MSS. M. Rheims; Palais Galliera; Paris	\$ 293,480.00

TOULOUSE-LAUTREC, HENRI DE
"AU BAL DE L'OPERA"
Oil on board; 25 1/4" x 20 7/8"
May 19, 1966; Parke-Bernet; New York \$ 100,000.00

TOULOUSE-LAUTREC, HENRI DE
"FEMME ASSISE DANS UN JARDIN"
Oil on wood; 55 cm. x 45 cm.
October 14, 1965; Parke-Bernet; New York \$ 105,000.00

VELASQUEZ, DIEGO RODRIGUEZ DE SILVA Y
"PORTRAIT OF DON JUAN CALABAZAS"
Oil on canvas; 175 cm. x 106 cm.
March 19, 1965; Christie, Manson & Woods; London \$ 499,800.00

AMENDED INTERROGATORIES TO MARIACHER

UNITED STATES TAX COURT

-----X
SID FAREER and NADIA FAREER, :
Petitioners, :
-against- : Docket No. 2542-70
COMMISSIONER OF INTERNAL REVENUE, :
Respondent. :
-----X

AMENDED INTERROGATORIES TO BE PROPOUNDED TO
PROFESSOR GIOVANNI MARIACHER

Interrogatories to be propounded to Professor Giovanni Mariacher,
San Marco 52, Venice, Italy, a witness to be produced, sworn and
examined on the part of the above named petitioners by a United
States Consular Officer of the Office of the Consular General of
the United States of America, Milan, Italy, at the office of the
witness.

First Interrogatory:

What is your name, age, residence and occupation?

Second Interrogatory:

Before becoming Director of the Civic Museums of
Venice, what was your position?

Third Interrogatory:

Before becoming Assistant Director of the Civic
Museums of Venice, what was your position?

Fourth Interrogatory:

What was your academic training?

Amended Interrogatories to Mariacher

Fifth Interrogatory:

Have you written any books or magazine articles?

Sixth Interrogatory:

If so, list the books and articles that you have written.

Seventh Interrogatory:

Do any of your published works deal with Venetian artists of the period of Jacopo Robusti Tintoretto?

Eighth Interrogatory:

If so, would you tell us which works and how they were connected with the period of Tintoretto.

Ninth Interrogatory:

As Director of the Civic Museums of Venice, have you become familiar with the works of Tintoretto?

Tenth Interrogatory:

Would you describe that knowledge in detail?

Eleventh Interrogatory:

How many works of Tintoretto to your knowledge are there in Venice?

Twelfth Interrogatory:

Would you give the approximate location of such of the works of Tintoretto as you may know within the City of Venice?

Thirteenth Interrogatory:

Annexed to this Interrogatory as Petitioners' Exhibit No. 1 is an article entitled "An Unknown Susanna by Jacopo Robusti Tintoretto". Did you write this article?

Fourteenth Interrogatory:

Do you still believe the article to be correct?

Fifteenth Interrogatory:

Was this article about the painting exhibited to you in this room at this time?

Sixteenth Interrogatory:

Is this the painting that was exhibited to you by the Countess Nadia de Navarro, also known as Mrs. Sid Farter, which formed part of the exhibition in Milan, Italy, in 1964 of her works?

Seventeenth Interrogatory:

Have you closely examined this painting?

Eighteenth Interrogatory:

Do you believe this painting to be by Tintoretto?

RICHARD A. OSSERMAN
Counsel for Petitioners
1501 Broadway
New York, New York 10036

CROSS-INTERROGATORIES TO MARIACHER

UNITED STATES TAX COURT

**UNITED STATES
TAX COURT**

SID FARMER and NADIA FARMER,
Petitioners,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 2542-70

RESPONDENT'S CROSS-INTERROGATORIES OF
PROFESSOR GIOVANNI MARIACHER

THE RESPONDENT RESPECTFULLY REQUESTS that the following cross-interrogatories be propounded to Professor Giovanni Mariacher upon conclusion of petitioners' direct interrogatories.

1. At whose request or under whose auspices did you write the article entitled "An Unknown Susanna by Jacopo Robusti Tintoretto"?
 2. When was the article written?
 3. In what, if any, publications was the article published? Please give the volume and issue date.
 4. Were you paid for the article?
 5. Who are the "we" and "us" referred to in the article?
 6. When did you first see the painting at issue?
 7. Where did you first see it?
 8. Was the painting offered for sale at this time?
 9. How long did it take you to make your inspection of the painting?
 10. Have you seen the actual painting since then?

11. How many certificates or endorsements of opinion on works of art do you issue in a year?
12. Are you paid for your certificates or endorsements?
13. Please describe the type of canvass that Tintoretto usually painted on?
14. What kind of canvass was the subject painting painted on?
15. What kind of underpainting did Tintoretto generally use?
16. What was the underpainting on the subject painting?
17. What scientific aids, if any, did you use in your examination of the painting?
18. Did you use x-ray in making your examination?
19. Did you use infrared photography in your examination?
20. Did you use ultraviolet lights?
21. Did you make a chemical analysis of the pigment?
22. What was the condition of the painting at the time of your inspection or inspections? Was it good, fair or poor?
23. At the time of your first inspection, had the painting been restored? If so, to what extent?
24. If the painting had been restored to any extent, do you think the restoration changed the character of the work? If so, how and to what degree?

25. If the painting had been restored to any extent, do you think the restoration changed the value of the painting? If so, to what extent?

26. Have you ever physically compared the painting at issue with that of "Susanna and the Elders" owned by the Vienna Kunsthistorisches Museum? If so, where and when?

27. If both works were not physically compared, what was the basis for your comparison?

28. What, if any, Viennese authorities have compared these two paintings?

29. How do you account for the fact that the hair of Susanna in the painting at issue has no structural definition as does the hair in the Vienna painting?

30. How do you account for the lack of modeling in the nose of the painting at issue, the hardness of the edge of the upper lip as it disappears against the background, while in the Vienna picture there is a strong sense of form as it exists in space and light?

31. How do you account for the fact that the form of the right hand of the figure in the painting at issue is so misunderstood that the whole back of the hand and the beginning of the thumb structure is missing while this is not the case in the Vienna painting.

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Cross-Interrogatories to Mariacher

32. How does it happen that the form of the corsalet in the subject painting is ambiguous in shape but clearly defined in the Vienna picture?

33. At what era or period in Tintoretto's life do you place the subject painting? Please be as specific as possible.

34. At what age was Tintoretto's daughter, Marietta, at this time?

35. How often did Tintoretto leave his work unsigned?

36. Who do you consider responsible for Tintoretto's training as an artist?

37. What does Ridolfi say about Tintoretto's relationship with his two putative teachers, Egnazio Veronese and Andrea Schiavone?

38. Can the subject painting be identified with any mentioned by Ridolfi or Bocchini? If not, when did it first appear and under what circumstances?

39. What is the background of ownership from Tintoretto's time that leads you to believe that the subject painting is a Tintoretto?

40. Who was the collector mentioned before Novarro? Was he a serious collector or a dealer?

41. We have been unable to find the subject work listed in Berenson, Tietze and Von der Beschen, three books giving a complete listing of Tintoretto's works. What reference or reproduction of this work has been published in any written or published material on Tintoretto?

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Cross-Interrogatories to Mariacher

42. What was the nature of the 1964 Milan exhibition at which the painting was exhibited? Was it a serious scientific exhibition or was it a dealer's exhibition?

43. Was the painting offered for sale at the 1964 Milan exhibition?

44. What was the nature of the 1966 Athens exhibition at which the painting was exhibited? Was it a serious scientific exhibition or was it a dealer's exhibition?

45. Was the painting offered for sale at the 1966 Athens exhibition?

46. Why was the work not shown in the great exhibition of works by Tintoretto organized in Venice in 1937 by Nino Barbantini?

47. Except for your own subjective judgment, is there any compelling reason to believe this to be an autographic work by Tintoretto and not a version after the Vienna picture entitled "Susanna and the Elders," which was done in the 17th century by an imitator, especially in view of the fact that Tintoretto's son-in-law kept the firm in business into the mid-1620's?

48. In the intervening years since your first statement on the painting, have you found any reason to change your opinion?

49. On the basis of your present information on the painting, do you now consider it to be autograph, that is, entirely by the hand of Jacopo Robusti Tintoretto?

(Sgd) K. MARTIN WORTHY - JWM

K. MARTIN WORTHY
Chief Counsel
Internal Revenue Service

OF COUNSEL:

MARVIN E. HAGEN
Regional Counsel
POWELL W. HOLLY, JR.
Attorney
Internal Revenue Service
26 Federal Plaza (12th Floor)
New York, New York 10007

ANSWERS TO INTERROGATORIES TO MARIACHER

Interrogatories propounded to

Professor Giovanni MARIACHER
San Marco, 52
Venice, Italy.

To the first question, he says:

Giovanni Mariacher
I am 59 years old
I reside in Venice
I am a Director of Civic Museums.

To the second question, he says:

I was Assistant Director and then
Vice Director.

To the third question, he says:

I was a student.

To the fourth question, he says:

I took a University Degree in Literature.
I then passed the Italian State examinations
to obtain the credentials to teach
at University level.

To the fifth question, he says:

Many.

To the sixth question, he says:

I have brought with me here a complete
list of all my published writings: both
books and articles. I could let you have
a copy.
(This is marked "EXHIBIT A" and attached).

To the seventh question, he says:

Yes I have written one article on restora-
tions in the magazine "Arte Venezia"; it
concerns restorations of paintings by
Jacopo Robusti Tintoretto.

Paintings by Tintoretto are also mentioned
in the catalogue I have written entitled
"Pipinti del Museo Correr" (Paintings of
the Correr Museum) which I have written.
The Correr Museum is the one of which I am
the Director.

In the catalogue "Nostra Arte a Venezia
1871" (Art in Venice 1871 Exhibition) some
of Tintoretto's paintings are published
that I have personally studied which form
an integral part of this catalogue.

N. G. - J. G. -

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Answers to Interrogatories to Mariacher

To the eighth question, he says:

I have already answered this question.

To the ninth question, he says:

Yes, and equally I have closely followed all restorations on Tintoretto's works.

To the tenth question, he says:

I have already answered this question. I could also refer you to all the articles I have written on this subject.

To the eleventh question, he says:

There are a great number. I cannot give you a precise figure but I know there are many Tintoretto's in Venice.

To the twelfth question, he says:

In the "Galleria dell'Accademia".

In the Scuola di San Rocco.

In the Copper Museum.

In some churches for example in the church of Madonna dell'Orto.

The reason why there are so many Tintoretto's in Venice is because he has lived and worked here.

To the thirteenth question, he says:

Yes.

To the fourteenth question, he says:

Yes.

To the fifteenth question, he says:

Yes.

To the sixteenth question, he says:

I have never met Contessa Matsumoto, but I have seen the painting at issue at an exhibition in Milano a few years ago although I do not recall the exact year in which this exhibition took place.

To the seventeenth question, he says:

Yes of course and I have also measured it.

To the eighteenth question, he says:

Yes it is a Tintoretto but has undergone several restorations.

Dated: Venice, Italy, February 4th 1972.

M. G. C. -

ANSWERS TO CROSS-INTERROGATORIES TO MARIACHER

Cross-interrogatories propounded to

Professor Giovanni MARIACHER
 San Marco, 52
 Venice, Italy.

- To the first question, he says: I do not feel compelled to answer this personal question. However, the article is the fruit of personal interest and study.
- To the second question, he says: I cannot remember.
- To the third question, he says: I only have the original text written by me and do not know if it has been published.
- To the fourth question, he says: I refuse to answer this question as a matter of principle.
- To the fifth question, he says: We Italians often use the pronouns "we" and "us" even when it is the author who expresses his views.
- To the sixth question, he says: I cannot remember the exact date.
- To the seventh question, he says: I cannot remember this either.
- To the eighth question, he says: I am not aware of this.
- To the ninth question, he says: I cannot really remember how long it had taken me.
- To the tenth question, he says: No.
- To the eleventh question, he says: I believe this question to be far too personal and I am not answering it.
- To the twelfth question, he says: I refuse to answer this question Sir. I am only willing to answer questions pertaining to the painting at issue or on art in general.
- To the thirteenth question, he says: Tintoretto usually painted on rather thick canvass with a large weave.
- To the fourteenth question, he says: On a rather thick canvass.

11/10/1977

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Answers to Cross-Interrogatories to Mariacher

To the fifteenth question, he says:

Tintoretto used a very quick type of under-painting. He did not give too much of his attention or time to this aspect of his work. He was an artist that worked rapidly and who has produced a great number of paintings. As a matter of fact the comparatively little time spent by him on preparatory work is the reason why it is always so difficult to restore his paintings.

To the sixteenth question, he says:

It is impossible to judge this with the naked eye. More profound technical tests should be carried out. It would be necessary to remove a small section to be able to answer this question, and this I have not done.

To the seventeenth question, he says: None.

To the eighteenth question, he says: No.

To the nineteenth question, he says: No.

To the twentieth question, he says: No.

To the twenty-first question, he says: No.

To the twenty-second question, he says:

However, Fair I would say. Although it is not damaged

To the twenty-third question, he says:

I believe so. I don't know if it has been further restored since. However, all of Tintoretto's works and all the works of his school have had to be restored.

To the twenty-fourth question, he says:

If by "changed" you mean that the work cannot be recognized I would answer "no".

To the twenty-fifth question, he says:

No. In my opinion the value it had then is still valid. I could not state that the value has changed.

7/1/1962

Answers to Cross-Interrogatories to Mariacher

To the twenty-sixth question, he says:

No. I know the painting that is in Vienna and have seen it but I have not had the opportunity of physically comparing the two side by side.

To the twenty-seventh question, he says:

From memory and also on the basis of photographs of the Vienna painting which I had brought with me.

To the twenty-eighth question, he says:

I believe so because I have here with me a copy of a survey made of the painting by the Director of the Vienna Museum, Professor Suida, who is an even greater authority on the subject than I am. At the time of this survey he was the Director of the Vienna Kunsthistorisches Museum.

To the twenty-ninth question, he says:

Because the painting has obviously been done at a different time.

To the thirtieth question, he says:

Undoubtedly the Vienna painting is the principal edition of the subject and the more perfect and valuable one. If the painting at issue were the same as the Vienna one it would have art-wise the same importance. Obviously it is not such a good one this being a different edition. My study of the painting at issue has led me to believe that it has been done at a later date.

To the thirty-first question, he says:

This calls for the same answer I gave to questions twenty-nine and thirty.

To the thirty-second question, he says:

I cannot understand the question. Being this a nude I do not know why I am asked about a "corset" which I understand to mean an item of clothing.

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J. W. M.

Answers to Cross-Interrogatories to Mariacher

To the thirty-third question, he says:

I have also written this in my study of the painting. In my opinion it was painted after 1570.

To the thirty-fourth question, he says:

I cannot recall from memory. I should be obliged to look up on some publication her date of birth to answer this question.

To the thirty-fifth question, he says:

Often. As a matter of fact I can state that he hardly ever signed his works.

To the thirty-sixth question, he says:

Above all to Tiziano (Titian).

To the thirty-seventh question, he says:

It seems strange to ask me to report from memory Ridolfi's views which have been published and are thus well documented. It is, however, a known fact that Pintoretto, in his earlier works, was influenced by Renifacio Veronese and Andrea Schiavone especially with regard to their taste for "mannerism" with regard to their taste for "mannerism". This, however, refers to his earlier works which are prior to the painting at issue.

To the thirty-eighth question, he says:

The subject is definitely the one mentioned by Ridolfi and ~~nowhere~~ as I have mentioned in my own study of the painting.

To the thirty-ninth question, he says:

I do not know the background of ownership of this painting.

To the fortieth question, he says:

I do not know who the person in question is.

To the forty-first question, he says:

Neither have I ever seen this painting listed or mentioned in publications on

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10-10-70

Answers to Cross-Interrogatories to Mariacher

Tintoretto. But I have seen the statements from art authorities that regard this particular painting: Suida, Director of the Vienna Museum; Gronau, author of a book on Titian and a student of Venetian painting; Augusto Mayer who is also a student of Italian art and Professor Piozzi of Padova University who is a specialist on Venetian art.

To the forty-second question, he says:

In my opinion it was a serious exhibition.

To the forty-third question, he says:

I don't know.

To the forty-fourth question, he says:

I didn't even know about the 1936 Athens Exhibition. It could have taken place but I know nothing about it.

To the forty-fifth question, he says:

I cannot obviously answer this question.

To the forty-sixth question, he says:

How can I tell? In 1937 I was a student and not even in Venice. It may well be that the organizer of this exhibition had no knowledge of the painting's existence.

To the forty-seventh question, he says:

My personal opinion is that it is a Tintoretto of a later date than the Vienna "Susanna and the Elders". My personal opinion and that of art authorities who believe it can always be doubted or contradicted by other experts - this is a frequent happening with works of art not bearing the artist's signature or when documents sustaining their authenticity are missing.

To the forty-eighth question, he says:

No.

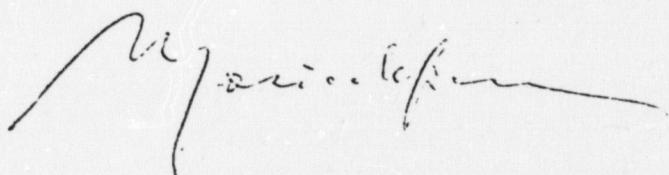
12/14/44

Answers to Cross-Interrogatories to Mariacher

To the forty-ninth question,
he says:

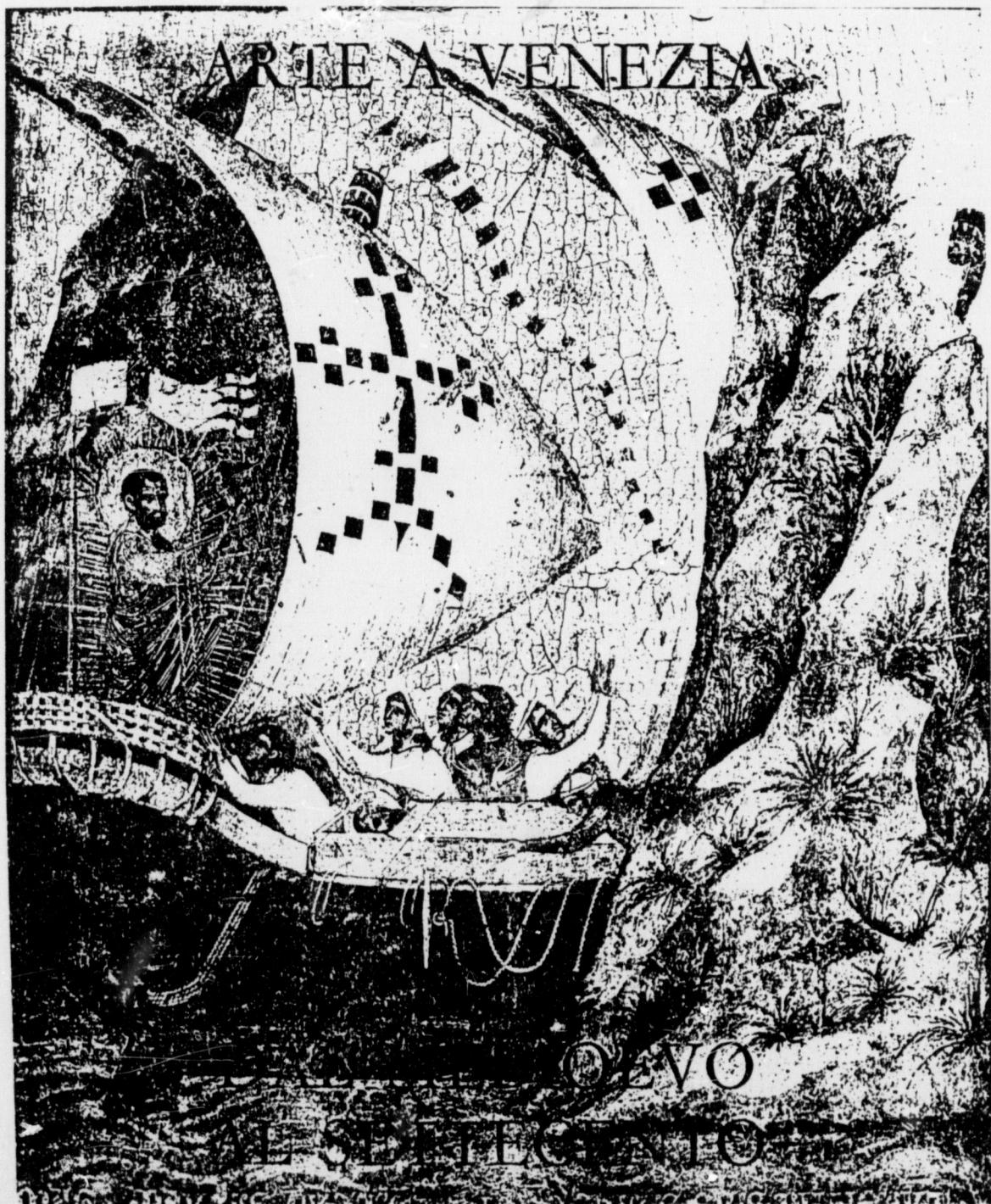
I confirm what I have written on the subject and what I already said in answer to a previous question that it is a painting by Tintoretto in his later years. There are other variants of this painting; one is in Madrid, one in Paris, one in Dresden and one was also in München but I don't know whether it is still there. They are all on the same basic subject with variations. It is the same subject, the Susanna, in various poses by Tintoretto who obviously liked the subject.

Dated: Venice, Italy, February 4th 1972.

A handwritten signature in black ink, appearing to read "Mariacher".

A 75

Answers to Cross-Interrogatories to Mariacher



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Answers to Cross-Interrogatories to Mariacher

GIOVANNI MARIACHER

ARTE A VENEZIA

DAL MEDIOEVO AL SETTECENTO

Testimonianze e recuperi

CATALOGO DELLA MOSTRA

*Venezia - Procuratie Nuove
26 Giugno - 31 Ottobre 1971*

ALFIERI

Answers to Cross-Interrogatories to Mariacher

- LIEVI D'ANCONA MIRELLA, *Miniature venete nella coll. Wildenstein*, in «Arte Veneta», 1956.
- *La Mariagola della scuola grande di S. Marco al Museo Correr*, in «Bollettino dei Musei Civici veneziani», 1965.
 - *Un libro d'Ore di Francesco Marmitta da Parma e Martino da Modena al Museo Correr*, I, in «Bollettino dei Musei Civici Veneziani», XI, 1966.
 - *Un libro d'Ore di Francesco Marmitta da Parma e Martino da Modena al Museo Correr*, II, in «Bollettino dei Musei Civici Veneziani», XII, 1967.
 - *Giustino del fr Gherardino e gli affreschi perduti del Guariento nel Palazzo Ducale*, in «Arte Veneta», 1967.
- LINFERT CARL, *Hieronymus Bosch*, London, 1959.
- LONGHI ROBERTO, *Piero dei Franceschi e lo sviluppo della pittura veneziana*, in «Arte», 1914.
- *Vaticano per cinque secoli di pittura veneziana*, Firenze, 1946.
- LORENZETTI GIULIO, *La Loggetta del Campanile di San Marco*, in «L'Arte», II, 1910.
- *Itinerario Sansoriniano a Venezia*, Venezia, 1929.
 - *Utri cristalli e specchi veneziani del Settecento. Le Arti alla mostra del 700*, in «Rivista di Venezia», 1929.
 - *La Scuola Grande di S. Giovanni Evangelista a Venezia (Notizie Storiche e artistiche)*, Venezia, 1929.
 - *Di un gruppo di bozzetti di Giovanni Maria Morlaiter*, in «Dedalo», luglio 1931.
 - *Modelli e Bozzetti di terracotta di Giovanni Maria Morlaiter*, in «Rivista di Venezia», anno XIV, n. 5, 1935.
 - *Ca' Rezzonico*, Venezia, 1936, I ediz.
 - *Argenterie Settecentesche Italiane Sacre e Profane*, Venezia, 1938.
 - *Torella*, Venezia, 1939.
 - *Venezia e il suo estuario*, Milano, 1944.
 - *Liberi miniati veneziani*, in «Cinque Secoli di pittura veneta» (catalogo della Mostra), Venezia, 1945.
 - *Mostra del Tiepolo*, Venezia, 1951.
 - *Ca' Rezzonico*, Venezia, 1951, IV ediz.
 - *San Marco*, Venezia, 1952.
 - *Guida del Museo Vetrario di Murano*, Venezia, 1952.
 - *Venezia e il suo estuario*, Roma, I ediz. 1926, ediz. consultata 1956.
 - *Ca' Rezzonico*, Venezia, 1960, VI ediz.
- LORENZETTI GIULIO - PLANISIG LEO, *La collezione dei Conti Donà dalle Rose a Venezia*, Venezia, 1934.
- LORENZI GIAN BATTISTA, *Monumenti per servire alla storia del Palazzo Ducale*, Venezia, 1868.
- LUDWIG GUSTAV, *Archivalisch Beiträge zur Geschichte der venezianischen Malerei*, in «Jahrbuch pruss. Beicht.», 1905.
- LUZIO ALESSANDRO, *Giulio Campagnola*, in «Archivio storico dell'Arte», I, 1888.
- MALLE LUIGI, *Considerazioni sui caratteri stilistici delle Arazziere di Arras e Tournai nel '400*, in «Commentarii», 1953.
- MANIAGO (di) FABIO, *Storia delle Belle Arti friulane*, Udine, 1823.
- MARCHESENI LINO - VALCANOVER FRANCESCO, *Su un processo di consigliamento di opere d'arte di marmo fortemente alterato*, estratto dal «Bollettino Istituto Centro di Restauro», 1968.
- MARIACHER GIOVANNI, *Antonio da Rigozzo e Antonio Rizzo*, in «Arte Veneta», 1941.
- *Profilo di Antonio Rizzo*, in «Arte Veneta», 1948.
 - *Artigianato Liturgico - Catalogo della Mostra*, Venezia, 1950.
 - *Problemi di scultura veneziana*, in «Arte Veneta», 1950.
 - *Tullio Lombardo Studies*, in «The Burlington Magazine», XCVI, dicembre 1954.
 - *Pietro Lombardo a Venezia*, in «Arte Veneta», 1955.
 - *Croci dipinte veneziane del '300*, in «Scritti di Storia dell'arte in onore di Lionello Venturi», II, Roma, 1956.
 - *Il Museo Correr di Venezia*, Venezia, 1957.
 - in «Bollettino dei Civici Musei Veneziani» 1960, p. 45.
 - *Il Palio argenteo del SS. Salvatore a Venezia*, in «Scritti di storia dell'arte in onore di Mario Salini», Roma, 1961.
 - *Il Massarino*, (con ampia bibliografia), Verona, 1962.
 - *Nuovi appunti sul Brastolon a Ca' Rezzonico e al Museo Correr*, in «Bollettino dei Musei Civici Veneziani», 1965, n. 1-2, anno X.

- MARIACHER GIOVANNI**, *Bronzetti del Rinascimento al Museo Correr*, (Catalogo), in «Bollettino Musei Civici Veneziani», n. 1, 1966, anno XI.
- *Un monumento salvato a Venezia*, in «Il Gazzettino», 6 aprile 1966, Venezia.
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EXHIBIT A--EXPERTISE OF MARIACHER ANNEXED TO
ANSWERS TO INTERROGATORIESUNA SCONOSCIUTA "SUSALINA" DI JACOPO TINTORETTO

E' noto quanto Jacopo Tintoretto amasse, oltre ai soggetti religiosi, che conventi, chiese e confraternite gli commettevano, anche i soggetti profani. Tra questi, un posto notevole occupano le Veneri ed i nudi femminili, che il pittore amava ritrarre sin dagli inizi della sua attività, con grazia e freschezza inimitabili. Quello della Venere era del resto un tema che prima di lui un altro grande veneziano aveva iniziato, cioè il Giorgione, seguito poi da Tiziano Vecellio con le sue note edizioni dedicate alla dea della bellezza e dell'amore.

Soggetti dove il nudo appare, oltre alle Veneri vere e proprie, sono dunque numerosi nella lunga carriera del Robusti. Ci basterà ricordarne qualcuno: l'Adamo ed Eva della Galleria degli Uffizi a Firenze e quello dell'Accademia di Venezia, Venere scoperta da Vulcano (Pinacoteca di Monaco) e Leda col cigno, pure agli Uffizi; la Danae del Museo di Lione e l'Arsinoe della Galleria di Dresda, le nove Muse del Castello Reale di Hampton Court, le Tre Grazie, e Bacco e Arianna nel Palazzo Ducale di Venezia, e via dicendo. Tutte queste tele datano in genere dopo il 1550 ma giungono anche oltre il '70, come le due ultime che abbiamo ora ricordato, nel Palazzo dei Dogi (Sala dell'Anticollegio). E' un periodo molto ricco e proficuo per la produzione tintoretiana, e possiamo dire che in questo campo particolare esso giunga anzi alle vette più alte. Il corpo umano è reso con uno spirito aulico e idealizzante, a suo modo diverso da quello sognante e del tutto spirituale che era proprio di Giorgione, oppure dalla sensualità morbida e talora esuberante di Tiziano.

Particolarmente degna di nota è quindi questa nuova edizione della "Susanna" che qui segnaliamo, e che di certo va ascritta a quel vivace momento, cioè a nostro parere, poco oltre il 1570. Anche questo soggetto, così facile al gusto edonistico del tempo pur riguardando un tema etico-religioso, venne più volte trattato dal Tintoretto. Ricordiamo specialmente, la Susanna bagnante, con la fantesca, al Museo del Louvre di Parigi, la Susanna con i due vecchioni, al Prado di Madrid, quella già nella Raccolta von Nemes di Monaco, cui si può aggiungere, benchè non tutta opera originale, l'edizione della Galleria di Dresda (Catal. n.81). Ma di tutte la più nota e affascinante è ancora la tela della Gemäldegalerie di Vienna, dove la donna appare seduta in atto di asciugarsi un piede, mentre l'altro è ancora immerso nella vasca: essa si guarda in uno specchio appoggiato alla siepe fiorita, dietro la quale fanno capolino i due curiosi dalla poco veneranda canizie. Uno stupendo luminoso paesaggio fa da sfondo alla scena, filtrando una luce calda che ammorbidisce in tenui trasparenze il corpo di Susanna. Il quadro corrisponde abbastanza bene alla descrizione che ne fa il Ridolfi nella sue "Maraviglie dell'Arte" edite nel 1648, quando esso si trovava nella raccolta di Niccolò Renieri 'eccellente pittore'. La identificazione venne infatti accolta dalla maggioranza degli studiosi e registrata nei Cataloghi medesimi della Galleria viennese.

La tela che qui presentiamo ripropone lo stesso soggetto, limitato peraltro alla sola figura della donna, anche qui nuda o 'secondo il naturale' come diceva il Ridolfi, nella identica

posizione di bagnante appena uscita dall'acqua. La tela misura m.l.12 x 0.93 (contro i 56,5 x 76 cm. del dipinto di Vienna) ed ha struttura nettamente verticale, a differenza dell'altro. Emerge in ogni caso la sicura paternità del maestro, che vi esprime tutta la sua potenza pittorica, il suo vigore luminoso, giocando di forti contrasti con le ombre dense che si raccolgono nel fondo. Quest'ultimo è nettamente diverso da quello di Vienna, anche se qui pure un paesaggio fitto d'alberi fronzuti si delinea, lasciando poco spazio al cielo. La figura della donna, così isolata come unico personaggio del tema, domina sovrana, nel suo corpo superbo ed armonioso, che ben si accorda con i nudi più chiari e maturi dipinti dal Tintoretto.

I caratteri di stile, come già suggerì in una sua opinione l'ilustre studioso August L.Mayer, ci inducono a datare il pezzo più tardi della versione viennese, che in genere si suole collocare sulla metà del secolo o poco oltre, comunque tra il 1550 e il '60. Concordiamo senz'altro in questa ipotesi, portandoci nel nostro caso dopp il '70, quindi più vicino alle tele dell'Anticollegio in Palazzo Ducale a Venezia. Quanto al caso di una ripetizione parziale, a distanza di tempo, di un medesimo soggetto, ben sappiamo che esso non è raro nella carriera del pittore. Basterà ricordare, ad esempio, quello della "Suonatrice di viola", figura isolata nel dipinto della collezione Lanz ad Amsterdam, ripresa dallo stesso Robusti sul precedente dipinto raffigurante le "Nove Muse" (Castello Reale di Hampton Court). Jacopo Tintoretto non disdegnava di ritornare sulla via di argomenti già trattati, specie quando la piacevolezza o la fortuna del soggetto glielo suggerivano. Riteniamo che nulla meglio

di questa dolce 'Susanna' può aver affascinato i ricchi committenti del pittore, così da indurlo a rifare con poche varianti il medesimo soggetto.

Giovanni Mariacher

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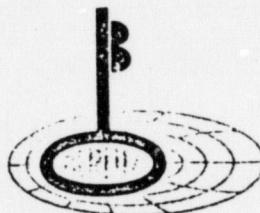
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AN UNKNOWN "SUSANNA" BY JACOPO TINTORETTO

It is a known fact that Jacopo Tintoretto loved even profane subjects in addition to the religious subjects entrusted to him by convents, churches and brotherhoods. Important among these profane subjects were the Venuses and female nudes which the painter loved to portray from the beginning of his activity, with inimitable grace and freshness. The Venus theme had been started by another great Venetian prior to Tintoretto, that is Giorgione, followed by Tiziano Vecellio with his well-known editions dedicated to the goddess of beauty and love.

Thus, there are numerous subjects in the long career of Robusti (Tintoretto) where the nude appears, in addition to the Venuses themselves. It suffices for us to recall a few: the Adam and Eve in the Uffizi Gallery, Florence, and the one in the Academy of Venice; Venus discovered by Vulcan (Monaco Picture-Gallery) and Leda with the Swan, also in the Uffizi; the Danae in the Museum of Lione and the Arsinoe in the Gallery of Dresda; the nine Muses in the Royal Castle of Hampton Court, the Three Graces and Bacchus and Ariadne in the Palazzo Ducale of Venice; and so forth. All these canvases date, as a rule, after 1550 but also reach beyond '70, such as the last two we mentioned, in the Palazzo dei Dogi (Sala de'll'Anticollegio). This is a very rich and profitable period for Tintoretto's

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production, and we may say that in this particular area, it reaches the highest peaks. The human body is rendered with an aulic and idealizing spirit, which is in its own way different from the dreamy and completely spiritual manner which was peculiar to Giorgione, as well as different from the morbid and sometimes exuberant sensuality of Titian. Particularly note-worthy is this new edition of the "Susanna" which we point out here, and which most certainly can be attributed to that vivacious momento, that is in our opinion, a little after 1570. Even this subject, so simple to the hedonistic taste of the time even though dealing with an ethical-religious theme, had been treated many times by Tintoretto. Let us recall, in particular, the Susanna bathing with the servant, at the Louvre in Paris; the Susanna with the two old men, at the Prado in Madrid; the one which is already in the von Nemes Collection of Monaco, to which might be added, although it is not entirely an original work, the edition in the Gallery of Dresda (Catalog No. 81). But of all these, the best known and most fascinating is still the canvas in the Gemaldegalerie in Vienna, which shows the woman seated in the act of drying a foot, while the other is still immersed in the tub: she looks at herself in a mirror while leaning on a flowered hedge, behind which two curious old people are peeping. A stupendous, illuminated landscape serves as background to the scene, filtering a warm light which softens Susanna's body in transparent soft tones. The painting corresponds quite well to the description made of it by Ridolfi in his "Wonders of Art" edited in 1648, when

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it was found in the collection of Niccolo Renieri, excellent painter. In fact, the identification was welcomed by most students and registered in the very Catalogs of the Viennese Gallery.

The canvas we are presenting here reposes the same subject, limited, however, to the figure of the woman only, nude even here, or "au naturel" as Ridolfi used to say, in the identical pose of a bather who has just come out of the water. The canvas measures m. 1.12 x 0.93 (against 56.5 x 76 ^{inchas} cm. in the Vienna painting) and has a decidedly vertical structure, as opposed to the other one. In any event, this painting reveals the undisputed paternity of the master who expresses all his picturesque power in it and his luminous vigor, playing strong contrasts with the dense shadows which are gathered in the background. The latter is very different from the one in Vienna, even if here also there is a landscape which is thick with leafy trees, leaving little space for the sky. The figure of the woman, thus isolated as the only person in the theme, dominates supremely, in her superb and harmonious body, which is in perfect accord with the lighter and more mature nudes painted by Tintoretto.

The characteristics of style, already suggested by the distinguished expert August L. Mayer, lead us to date the piece later than the Viennese version (usually dated around the middle of the century or little after, that is, between 1550 and '60.) Let us thus agree on this hypothesis, bringing us in this case after '70, therefore nearer the canvases in the Anticollegio in the

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Palazzo Ducale in Venice. As for the possibility of a partial repetition, after some time, of the very same subject, we know very well that this is not rare in the career of the painter. Suffice it to recall, for example, that of the "Viola Player", an isolated figure in the Lanz collection in Amsterdam, taken by Robusti (Tintoretto) himself on the previous painting showing the "Nine Muses" ('Royal Castle of Hampton Court). Jacopo Tintoretto did not disdain to return to subjects which had already been handled, especially when the pleasing quality or the fortune of the subject suggested itself to him. We believe that nothing better than this sweet "Susanna" could have fascinated the wealthy clients of the painter and induced him to re-do the same subject with few variations.

Giovanni Mariacher

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61-63, 107, 108, 227-228

(signed)

Puente stupenda rappresentazione
 Emily C. Lee, S. M.
 HOTSTRA UNIVERSITY
 HEMPSTEAD, NEW YORK 11550
 della "Susanna" in tela (m. 1.12 x 0.93)

è opera autografa di Jacopo Tintoretto
 e va considerata come piena edizione
 o variante del resto dipinto del Museo di
 Vienna (Gemäldegalerie, n. 239), già ricorda-
 to da Ridolfi, che lo critico ha datato
 fra il 1550 e il 1570. Venica è infatti
 la figura della donna, intenta ad acciogar-
 si il piede destro, mentre si notano
 varianti notevoli nel fondo, caratterizzato
 da folte macchie d'alberi. La tenuta orau-
 rata crea vivace contrasto, specie in alto
 e a destra, accentuando il contorno delle
 figure e suscitando un forte fascino nel
 gioco di luci e di ombre, inconfondibile
 del Tintoretto. Giovanni Mariacher

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This splendid portrayal of "Susanna" on canvas (1.12 x 0.93 m) is an original work of Jacopo Tintoretto; it is to be considered as the first version, or a variant, of the well known painting of the Museum of Vienna (Gemäldegalerie, No. 239), already mentioned by Ridolfi and which art experts placed between 1550 and 1570. In fact, the posture of the woman in the act of drying her right foot is identical, while noticeable variants appear in the background, characterized by dense patches of trees. The thick darkness creates a lively contrast, especially on the top right, by accentuating the outline of the figure and by raising that charming play of lights and shadows which is unique to Tintoretto.

Giovanni Mariacher

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SID FARBER and NADIA FARBER,

Petitioners-Appellants,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON being duly sworn, deposes
and says that he is over the age of 18 years. That on the 30th
day of May , 1975, he served one copies of the
Appellants' Appendix on
Scott P. Crampton, Assistant Attorney General

the attorney for the Appellee
by depositing the same, properly enclosed in a securely sealed
post-paid wrapper, in a Branch Post Office regularly maintained
by the Government of the United States at 90 Church Street, Borough
of Manhattan, City of New York, directed to said attorney at
No. Tax Division, U. S. Dept. of Justice, () NxxX,
Washington, D. C. 20530 that being the address designated by him for that purpose upon
the preceding papers in this action.

David F. Wilson

Sworn to before me this

30th day of May , 19 75

Courtney Brown

COURTNEY BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1976